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THE RENEWAL OF TRUST IN RESIDENTIAL CONSTRUCTION PART II

VOLUME TWO

COMMISSION OF INQUIRY INTO THE QUALITY OF CONDOMINIUM CONSTRUCTION IN BRITISH COLUMBIA

Submitted to
The Lieutenant-Governor in Council
Government of British Columbia
by
Dave Barrett, *Commissioner*

March 2000

March 9, 2000

The Honourable Jan Pullinger
Minister of Social Development and Economic Security
Parliament Buildings
Victoria, BC
V8X 1X4

Dear Ms. Pullinger,

On August 11, 1999, this Commission was re-appointed to inquire into the quality of condominium construction in British Columbia; the financial failure of New Home Warranty of British Columbia Inc.; and the impacts on homeowners, the industry, and the economy because of this situation. The Commission was to make recommendations for necessary changes in legislation, regulations, and administrative practices by October 15, 1999.

Unfortunately, the Commission met with resistance from the New Home Warranty Board of Directors and former executive staff, rendering it impossible to meet this deadline, or the subsequent deadline of January 15, 2000.

On January 31, 2000, I submitted to your predecessor, Volume I of the Commission's work which relates to homeowners and the urgent need for financial support to meet the costs associated with this unfortunate disaster. The scope and magnitude of the problem and the need to address the plight of these unfortunate victims, necessitated the immediate submission of the Commission's findings pertaining to financial compensation.

This volume includes all other matters not addressed in Volume I, including the causes of the failure of New Home Warranty, and is now submitted for your consideration. Because of the importance of the issues addressed in this report, we have provided relevant documents as Volume III, Part A and B.

Yours truly,

Dave Barrett
Commissioner

100-06077/

The Renewal of Trust in Residential Construction
Part II : Volume II

Contents

		Page
Letter of Transmittal		
Terms of Reference		i
Acknowledgments		ii
Executive Summary		iii
Chapter ONE:	Introduction	1
Chapter TWO:	New Home Warranty	3
Chapter THREE:	The Building Code	45
Chapter FOUR:	The Industry	70
	Builders/Developers	70
	Professionals	72
	Labour Force	77
	Financial Institutions	85
	CMHC	89
Chapter FIVE:	Government	99
	Federal	99
	Provincial	101
	HPO	103
	FICOM	114
	Municipal	126
Chapter SIX:	Health Issues	132
Chapter SEVEN:	Summary of Recommendations	143
Appendix I	Submitter's List	
Appendix II	Orders in Council	

TERMS OF REFERENCE

1. To further inquire into the quality of condominium construction in British Columbia, in particular, the adequacy of protection for, and accountability to, consumers for faulty condominium construction.

2. To inquire into the impact on homeowners, the housing market, mortgage insurers and the economy of the financial failure of New Home Warranty of British Columbia, Inc., and to inquire into the history of home warranties in BC and the causes of the failure of New Home Warranty of British Columbia, Inc.

3. To inquire into the extent of foreclosures, bankruptcies, and related matters arising from faulty condominium construction.

4. To submit a report by March 10, 2000 to the Lieutenant Governor in Council through the Minister of Social Development and Economic Security, recommending any measures, including but not limited to changes to legislation, regulations or administrative practice, that the Commissioner determines are needed.

The Commission's original reporting date was October 15, 1999. This was subsequently changed to January 15, 2000, and finally to March 10, 2000. The Commission needed to undertake an extensive examination of NHW activities leading up to its failure, and question senior staff and Board members. Much of this work was delayed because of an unwillingness of some parties to participate in the hearing process.

During the Commission's work, a clarification in the terms of reference was sought and granted. This clarification led to the addition *of "and to inquire into the history of home warranties in BC and the causes of the failure of New Home Warranty of British Columbia, Inc."*

Acknowledgments

The Further Inquiry into the Quality of Condominium Construction in British Columbia required extensive demands on those involved. This important work could not have been completed without the support and assistance of the Commission's advisors and support staff.

The Commission is very appreciative of the extensive support provided by Legal Counsel Peter Leask, Q.C., and Economic and Financial Advisor, Robyn Allan, who so ably assisted the Commission during the first hearings. Both professionals brought to this Commission's work their extensive backgrounds and experience as well as an intense understanding of the issues involved.

Also, I would like to thank Dixie Pidgeon, Tim Woods, Tom Sinclair, Maggie Sanders, Janet Lazarowich, Rita Lalik, Khris Chen, Catherine Kottmeier, and John Popkin for their hard work and dedication.

Finally, I would like to express my appreciation to the hundreds of presenters who came forward at the Public Hearings, or who wrote submissions to the Commission. Homeowners who shared their experiences, or industry participants who provided their professional assistance and advice, have been invaluable to the Commission's work. I trust the analysis and recommendations in this report and, subsequently, in Volume II, will provide much needed assistance to homeowners so they can continue to pursue their hopes and dreams, and to the industry, so that it can function in a healthy and prosperous manner.

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Executive Summary

On August 11, 1999, a further Commission of Inquiry into the Quality of Condominium Construction in British Columbia was appointed by the Minister of Social Development and Economic Security, to review the adequacy of protection for, and accountability to, consumers for faulty condominium construction.

The Commission was asked to inquire into the impact on homeowners, including the extent of foreclosures, bankruptcies, and related matters, and also the causes of the failure of New Home Warranty of British Columbia, Inc. The Commission, upon completion of its inquiry, was to recommend any legislative, regulatory, administrative, or other measures needed to ensure consumer protection and accountability for this situation.

The material presented in this report is a result of extensive public hearings, and numerous written submissions, received by the Commission from September 13, 1999 to February 21, 2000. In all, there were 53 sessions of public hearings held in Vancouver, Coquitlam, Richmond, Victoria, and Nanaimo. In total, there were 182 presenters and 340 submissions.

Presentations were made by condominium owners, strata council representatives, concerned individuals, groups involved in various public and private aspects of the industry, and professionals with expertise in related fields. The Commission also reviewed relevant existing legislation, public and private reports, and undertook various background research activities.

The Commission's report has been divided into two volumes. Volume I covers all aspects of consumer compensation, including the magnitude of the problem; review of recommendations contained in the first Barrett Commission report, as they relate to financial support for homeowners; and a recommendation for a Compensation Plan based on the findings of the recent hearings.

The testimony and submissions presented to the Commission clearly identify that the problem in residential construction is wide ranging and devastating, not just for those with limited means, on pension income, or involved in co-operative housing, but also for middle-income earners. The Commission has heard compelling testimony from a cross-section of British Columbians. This clearly suggests a crisis of unprecedented proportions. It is a disaster--the consequences of which are devastating and pervasive.

All other issues contained in the Commission's terms of reference are addressed in this volume including: New Home Warranty of British Columbia Inc., the Building Code, Industry, Government, and Health. Volume III is a compendium of documents relevant to Volume II.

Summary of Findings

1. New Home Warranty

This Commission of Inquiry has been charged with the responsibility of examining the impact on homeowners of the financial failure of New Home Warranty of British Columbia, Inc. It has also been asked to inquire into the history of home warranties in BC and the causes of the failure of New Home Warranty (NHW).

Causes of the Failure

1. There was a serious conflict of interest in that NHW was owned by the builders, and its Board composed of builders appointed by the Canadian Home Builders' Association of BC (CHBA-BC). This conflict of interest resulted in NHW's failure to raise rates to builders, even though the Board and executive knew, or should have known, that the risk was far in excess of the reserves held by the company.

2. Builder rating was established on the basis of the number of units enrolled and the length of time with the program. There was very little regard to the risk placed on the reserve fund by the builder subsequent to the builder's initial registration. A preferential rating policy existed which allowed for special treatment of a few major builders.

3. While begun as a warranty company, NHW was actually a marketing tool for CHBA-BC members, disregarding prudent insurance practices, such as adequate reinsurance, proper underwriting, and appropriate retention of reserves.

4. NHW caused, or permitted, the depletion of assets, by inappropriate allocation of funds to CHBA-BC through the Residential Construction Institute (RCI). These funds should have been retained in the reserves to provide funds for NHW claimants.

5. As long as the housing market was strong and continuing to grow, builder registrations created enough revenues to cover claims costs and general administration. NHW executives delayed the development of management information systems which would have allowed them to undertake appropriate analysis of the relationship between revenues and expenses.

6. NHW was not operated in a business-like manner. Since inception, it appears that NHW was administered for the primary purpose of increasing new home sales for members of its sole shareholder, CHBA-BC. Ongoing pressure from the NHW Board and builder associations to reduce rates and reserves, led senior executive to misrepresent and falsify financial reporting, thus threatening

long-term corporate viability. Senior management may also have been giving direction to corporate staff which led to an inaccurate picture of NHW's pending claims. Consequently, the deteriorating financial position was not fully incorporated into the funding analysis of the Company.

7. NHW was imprudently operated and, as a result, its financial strength was compromised. When leaky condo claims began to escalate in 1997 and 1998, the company was unable to deal with the crisis.

8. NHW Board and management continued selling warranty protection after the Company had significant concerns about its ability to meet future claims. It failed to deliver on the promises the company made when offering their product to the public. By January 1999, the Board was establishing a litigation fund in the event of law suits, and reserves were set aside to pay employee salaries in the event of insolvency. NHW filed for bankruptcy on March 30, 1999.

The Commission recommends that the Attorney General's Department conduct a forensic audit of New Home Warranty, the Canadian Home Builders Association of BC, and the Residential Construction Institute.

2. The Building Code

The Commission's first report concluded that a number of factors, including a failure of the building process; building science issues; overheated housing market; and a poorly-interpreted building code, led to a disintegration in the quality of residential construction in BC. This judgment received widespread endorsement from the building industry, architects, engineers, inspectors, and the general public.

Numerous presenters, including strata council representatives with commissioned engineer studies, architects, engineers, and warranty providers, told the Commission of building envelope failures as a result of poor or inappropriate design and shoddy workmanship. Not one example was brought forward where such buildings had been built to code. Instead code violations were the reason for the failure of the buildings.

Within the industry there is confusion in understanding and interpreting what is required by building codes. There is also confusion and misunderstanding regarding the nature of the leaky condo problem. Although discussion surrounding air barriers, vapour barriers, permeance, and poly are all interesting, they are not relevant to the problems facing British Columbia's building envelope failures. Building envelopes are failing because litres of water are entering the walls from the outside through poorly-designed roofs, balconies, and windows; because of badly-constructed joints, missing flashings, inappropriately-lapped building paper, and thinly-applied stucco.

There has been no evidence that building envelopes, constructed according to the building code, will fail. The Commission is aware that some building envelope systems, certain design approaches, and combinations of materials are conducive to higher standards than others. However, according to the extensive testimony received from numerous professionals, if the Building Code is followed--with a requisite understanding of building science--the building envelope systems will work.

With respect to a call for a "Made-in-BC Code," BC and Vancouver had had their own codes for a least the period under review (1983 - 1999). In order to meet the needs of our unique climate, these codes are established through a building industry, participatory process.

Shortly after the Commission reconvened public hearings in September 1999, it was learned through media reports that Mr. James Currie, director of the Building Standards Branch until retiring in 1987, had written to the Provincial Minister of Municipal Affairs in 1991 outlining his concerns over the direction taken by the National Building Code with respect to house construction. As well, Mr. Currie had written to the National Research Council in 1987. On May 25, 1999, Mr. Currie wrote to the then Minister of Municipal Affairs, Jenny Kwan, referring to his past correspondence on the matter. The Commission has reviewed the issues raised by Mr. Currie and the process undertaken to respond to his concerns by the provincial and federal departments responsible from 1987 - 1999. The Commission has found that each of Mr. Currie's letters were investigated and analyzed by industry building and regulatory authorities at the provincial and federal levels.

Because of the general level of misunderstanding and confusion surrounding building code issues, and the fact that voluntary education and training is not occurring quickly enough to instill the ability necessary for sound building envelope design and construction, for both new and repair activity, the Commission recommends mandatory education, training, and examination of builders, architects, and engineers.

Therefore, the Commission recommends that The Homeowner Protection Office, with the support of the Provincial Advisory Council, provide the leadership for minimum mandatory education for multi-family residential design and construction. Such education to include the testing of architects, engineers, and registered builders, regarding the basics of building science and interpretation of the BC Building Code and Vancouver Building Bylaw.

3. The Industry

In analyzing the various sectors of the British Columbia residential construction industry--from builder/developers, architects, engineers, and the building labour force, the Commission reconfirms that there are many causes responsible for the systemic breakdown of the industry. In reviewing various developments since the first report, it is clear there has been a substantial improvement in the quality of residential construction. However, more action is required in a number of important areas, especially on subcontractor licensing, compulsory trades designation

and enforcement, and the introduction of mandatory repair warranties. There were a number of recommendations from the first report dealing with these issues that need to be implemented.

The Reconstruction Fund has benefited financial institutions who hold first mortgages on condominiums with building envelope failure. Without the Reconstruction Fund, financial institutions would have suffered a cash flow loss, to date, of approximately $61 million and a real loss of close to $30.5 million. The Commission recognizes the financial institutions have not yet contributed to the solution of the leaky condo problems, and recommends that the provincial government bring in adjustments to the *Corporation Capital Tax Act* so that a dedicated revenue amount of $30 million ($10 million per year over three years) be obtained from financial institutions for financing the Research and Education activities of the HPO. It is further recommended that this fund be used as a capital fund and the interest earned each year be allocated to research and education as set forth by the Provincial Advisory Council.

The Commission, in a detailed review of Canada Mortgage and Housing Corporation (CMHC) and its role in this catastrophic disaster, has concluded that CMHC's public interest role has been seriously eroded as its commercial activities have advanced--especially in the area of consumer protection. This has been further aggravated by the unique relationship between CMHC and NHW, and a lack of stewardship by CMHC in ensuring that the home warranty company they mandated was a viable and prudent warranty company.

3. The Government

Widespread building envelope failures in British Columbia represent a catastrophic disaster, resulting in serious harm to the health, safety, and welfare of up to 50,000 families. The Commission urges the federal and provincial government to act on the recommendation contained in Volume I and implement the Compensation Plan.

Government structure should reflect the importance of residential construction to the economic health and well being of the province. Housing, as an area of public policy, has been neglected. All housing issues, including those related to leaky condos, would benefit from a clearer, more direct focus. The responsibility for housing issues has resided in a number of ministries, for at least the past decade, contributing to the confusion in the industry. Consistent with its recommendation in the first report, the Commission recommends the reinstatement of the Building Standards Branch. Further, the Commission recommends that the provincial government create a Housing Ministry responsible for BC Housing, housing policy, residential construction, the Homeowner Protection Office, Building Standards Branch, and the BC Building Code.

In addition, the Commission recognizes the need for ongoing stewardship of the industry's progress and recommends that a Legislative Select Standing Committee be established to conduct annual reviews, for the next five years, of all housing issues.

The Commission is concerned that municipal building inspection is not adequately monitoring Building Code compliance. Given the extensive number of code violations related to multi-family

construction, it is vitally important that municipal officials play a much more significant role in administering and enforcing the Code--this includes the need for a greater knowledge base for some officials when interpreting the Code.

Among the many issues and concerns raised over the current regulatory environment, related to the *Condominium Act* (soon to be the Strata Property Act) and the *Real Estate Act*, the Commission has concluded that there be conditional licensing of multi-family developer sales personnel, and that public disclosure documents intended for use in the sale of strata properties become mandatory. Furthermore, the HPO should establish a Condominium Homeowners Office to administer the Strata Property Act and provide services to condominium homeowners in an effort to redress the imbalance between developers and consumers, created in the market.

4. Health

Health issues related to mould and leaky condominiums are now coming into focus. The Commission has identified serious physical health consequences to many owners of leaky condo units whose exposure to mould growth has impacted their own health or that of their family members. Dealing with mould is a challenge, not only for condominium owners and their strata councils, but also for the construction industry, the remediation companies, construction workers, and governments at all levels.

The Commission has recommended that the Workers' Compensation Board increase the frequency of visits to condominium repair sites and implement amendments to relevant regulations dealing with the hazard assessment of biological contaminants.

Chapter ONE

Introduction

On June 16, 1998, the first report of the Commission of Inquiry into the Quality of Condominium Construction in British Columbia was submitted to the Lieutenant Governor in Council. This report included 82 recommendations, many of which were acted upon expeditiously, including the enactment of the *Homeowner Protection Act*; (HPA) mandatory builder registration; mandatory private-sector, competitive warranty; and the Provincial Reconstruction Loan Program.

The recommendations contained in the first report addressed numerous issues contributing to the crisis in residential construction in an effort to ensure that poor quality housing would never again be built, and that quality repairs would be undertaken for victims of this disaster. As well, recommendations were made to assist, in an equitable manner, those people who had suffered financially.

The Homeowner Protection Office (HPO) was approved in July 1998, and commenced operation October 1, 1998, under the authority of the HPA. In addition to the licensing and regulation of builders, and the administration of the Reconstruction Loan Program, the HPO, with assistance from the inter-industry Provincial Advisory Council (PAC), is responsible for developing an education, training, and research strategy necessary to meet the technology transfer required by this crisis.

Although the HPO has taken immediate steps toward implementing many of the recommendations of the first Commission's report, the regulation and licensing of sub-contractors and repair contractors, and mandatory warranty for repairs, are still outstanding. The status of outstanding recommendations, as well as implemented recommendations, are included throughout this report.

The first Commission's report included a number of recommendations to assist homeowners who had been financially impacted by this crisis. The recommendations required the support of the provincial, federal and, to a lesser extent, municipal governments. The development industry's contribution is a $750 levy on new construction. The provincial government responded positively. However, relatively little has been forthcoming in the way of support from the federal government. This lack of support has affected the financial stability of many homeowners--the effects of which are beginning to be felt throughout the entire economy.

On March 30, 1999, New Home Warranty of British Columbia, Inc., (NHW), a private-sector warranty company owned by the Canadian Home Builders Association of British Columbia (CHBA-BC), became insolvent. With 70,000 homeowners now without warranty protection--the majority of them owners of condominiums, the financial burden of this crisis intensified. The Commission had been assured during its first hearings that NHW would be able to meet the challenges of the leaky condo crisis through its reserves. However, with NHW's failure, the economic and financial consequences needed to be understood and addressed.

On August 11, 1999, the Commission of Inquiry was re-convened. Dave Barrett, former premier of the province, who conducted the first inquiry, was asked to conduct the second Commission. It's mandate was to inquire into the adequacy of protection for, and accountability to, homeowners for faulty condominium construction; the causes of the failure of NHW; and the financial, economic, and other costs related to this crisis in residential construction.

The Commission held hearings from September 13, 1999 to February 21, 2000. At the hearings, condominium owners--many who thought they were protected by NHW, and who are now in the early stages of the repair process, undergoing repairs, or facing bankruptcy and/or foreclosure--voiced their concerns. A broad cross-section of participants in the residential construction industry, as well as federal and provincial agencies and program representatives, also made presentations and answered the Commission's questions.

On November 8, 1999, the Commission issued to the Minister Responsible for Social Development and Economic Security, an urgent bulletin regarding the disclosure by builders of the warranty coverage provided on their newly constructed buildings. With the failure of NHW and the transition from a non-regulated to a regulated, mandatory warranty environment, consumers were confused. The Commission urged that all advertising related to the marketing of new residential construction clearly identify the scope of warranty coverage and whether the coverage offered met the minimum industry standard as required by the HPA.

On February 21, 2000, the Commission submitted Volume I of its report which focused on the magnitude of the problem and the need to provide compensation to homeowners facing repairs as a result of premature building envelope failure. Volume I was submitted in advance of this report because the impact of this crisis is severe and pervasive, resulting in conditions tantamount to a natural disaster. The Commission identified the indirect costs of this disaster and estimated them to be about two times greater than the direct repair costs of $1 billion estimated in its first report in 1998. This increased burden for all British Columbians is because of the failure of NHW, and the lack of action on outstanding financial support recommendations for homeowners.

Volume I included only one recommendation--*that the provincial government, with cost sharing provided by the federal government and the BC residential building industry, establish a Compensation Plan through the HPO. The Compensation Plan would provide a grant to homeowners for qualified building envelope repairs of up to $25,000, with cost sharing beyond this amount, to a maximum of $35,000.*

This report is being submitted as Volume II, of three volumes, and deals with the terms-of-reference items not included in Volume I. Volume III - Part A, B, and C, includes documents relevant to the findings in Volume II.

Chapter TWO

New Home Warranty

I've brought along a little sign here I thought you'd like to see. It is the sign the New Home Warranty placed in front of buildings, saying that the buildings were covered and protected. And of course what we found out now is that, just as the condos and some single-family homes were leaking and rotting, we've found out that the home warranty that this refers to, was a rotten warranty, not worth the paper that it was written on. That's very sad, and I hope you'll get to the bottom of why this happened.

- James Balderson, Condo Owner
September 13, 1999

I. Corporate History

"New Home Warranty of British Columbia and Yukon was created by the residential construction industry (Canadian Home Builder's Association of BC) in response to:

i) a growing consumer criticism over shoddy workmanship in house construction and fly-by-night builders who quickly surfaced in boom times and who more quickly disappeared when times got tough or complaints arose, and

ii) to meet the threat by Government to impose regulations governing how the residential construction industry would operate.

- New Home Warranty Information Bulletin
"What's in it for the Builder?" August 1995

The incorporation of NHW in April 1976 under the *BC Companies Act*, as a wholly-owned subsidiary of the CHBA-BC, averted a proposed mandatory provincial government program. NHW operated as a non-profit, voluntary, private-sector warranty program, even though its market opportunities were supported by CMHC's requirement that high-ratio insured mortgages carry home warranty. Builders were registered for a fee, and the residential units they constructed were covered by the program. The Company operated from April 1976 until it sought protection under the *Bankruptcy and Insolvency Act* on March 30, 1999.

Because NHW was registered as a non-profit company under the *Income Tax Act* it was not permitted to give any benefits to its shareholder, CHBA-BC. As a result of its pure warranty product and non-profit status, NHW was not regulated by the Financial Institutions Commission (FICOM).

Until mid-1995, in addition to its tax-exempt status, NHW had a monopoly position in British Columbia with respect to home warranty coverage, as it was the only home warranty approved by CMHC. According to NHW Task Force minutes of May 25, 1995, CMHC was under review by the Federal Ministry of Industry in 1994 for monopolistic practices of warranty company approvals. Subsequently, the market was opened up to other warranty providers. NHW was concerned that this adjustment in the market would negatively impact its position. Given the time lag in the approval of other warranty companies' entry into the market, NHW did not have any real competition until 1996.

As required by NHW's Articles of Incorporation, the Board of Directors was comprised of: the President, First Vice-President, Second Vice-President and immediate Past President of CHBA-BC; President and CEO (NHW), immediate Past Chairman (NHW); two from Directors or Officers of the 30 largest builders in the province, as long as the company was registered with NHW; and Directors or builders from local CHBA-BC associations.

The Directors attended meetings on a quarterly basis and were provided information by NHW's CEO, legal, accounting, and actuarial advisors. Senior executives of NHW, representing operational areas such as marketing, training and education, underwriting and claims handling, regularly attended meetings. The rate of turnover for most Board members was relatively high, although a few sat on the Board for a number of years. The Chief Operating Officer (COO) of CHBA-BC attended meetings and became an ex-officio Board member in 1997. NHW's legal counsel also acted on behalf of CHBA-BC and was a trustee for CHBA-BC's Residential Construction Institute (RCI).

Despite its tax exempt, monopoly position in the market, the financial viability of NHW was never secure. Mr. Jack Barker, interim Chairman of NHW in 1981-82, told the Commission in its first hearings:

> *Unfortunately, during 1981-82, when I took over as president of the New Home Warranty Program, it was bankrupt....We approached the Minister of Housing, Tony Brummet, for assistance in the sense of putting their homes on the New Home Warranty Program, and he refused. It was only the threat, after an argument with him, of walking down the corridor to see you, Mr. Barrett, and Colin Gablemann, that turned him around, and in fact saved the New Home Warranty Program....I resigned from the New Home Warranty Program because they undertook to warranty condominiums....They were inexperienced to handle it and I believe they're still inexperienced to handle it, Mr. Barrett.*
>
> *- Jack Barker, Past President and Interim Chair, NHW*
> *May 12, 1998*

Testimony on October 25, 1999, from Mr. Terry Smith, former president and managing director of NHW from 1978 - 1982, confirmed that, in its early life, NHW was not developing strongly. There was a concerted effort to attract larger, particularly multi-family developers, to increase enrollments. Unfortunately, *"there seems to be a certain group of--or were, in the '80s—a group of entrepreneurs who felt they had no responsibility for their product."*

With respect to the financial management of NHW, the program initially had reinsurance--an insurance product purchased by the warranty company to protect its claims reserves against unusually high or unexpected claims. The Board of Directors' decision to cancel this reinsurance protection was one of the main reasons for Mr. Smith leaving the employ of NHW. In speaking to the solvency problems, Mr. Smith stated to the Commission:

> *I think the warranty program became like a lot of businesses do; it lives off the cash flow. In other words, the circle goes round and round, and as the funds come in to fund new housing units, there 's expectation that the insurance portion, if we can call it that, of that premium, will cover subsequent losses. In other words, that we 've got an ever-increasing number of housing units being registered within the program.*
>
> *- Terry Smith, Former Managing Director, NHW*
> *October 25, 1999*

The problem with this approach to underwriting becomes painfully apparent when housing enrollments begin to decline.

NHW's reinsurance history is not easy to recreate. Essentially, it appears to be a process of solid reinsurance coverage becoming, over time, a riskier system of self-insurance.[1]

Mr. David Verge was hired as NHW's President and CEO in 1985, a position he held through to his resignation on March 25, 1999, five days before the Company filed for bankruptcy. During the fourteen years Mr. Verge was NHW's chief executive officer, the company grew from 24,036 units at risk to 84,307 units at risk Approximately 75 percent of the warranties were for multi-family homes.[2]

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[1] The Company's first reinsurance agreement was with Scottish & York from May 1, 1976 to March 1982. The premium rates were $20 per enrolled unit. If NHW incurred claims less than 50 percent of the premium, it would be eligible for premium refunds. If it incurred claims greater than 300 percent of paid premium, a surcharge of $15 per unit could be imposed. By 1982, the financial statements show a surcharge liability of $167,052. Shortly thereafter, NHW changed its contract with Scottish & York, entering into one that ran from March 1,1982 until September 1, 1986. Under this agreement, NHW assumed an annual aggregate deductible. The premium rate fell from $20 per enrolled unit to $1.30 per enrolled unit. The maximum payable by the reinsurer, however, was set at $1,750,000. Given the difference in premium charges between the two contracts, it is very likely that the coverage offered under the first reinsurance treaty was substantially better than the second one.

On September 1, 1986, NHW entered a financial guarantee agreement with the Mortgage Insurance Corporation of Canada (MICC) at the rate of $0.60 - $0.30 per enrolled unit, depending upon the balance in the Risk Retention Fund. If the balance in the Risk Retention Fund fell below a certain amount, MICC advanced the fund enough monies to maintain the designated amount. Any amounts called upon would have to be repaid to MICC in eight equal, half-year, installments. In 1996, MICC went into receivership and the agreement was therefore terminated. NHW became completely self-insuring at that time.

[2] The first multi-family units were registered in 1982 and by 1985 only 3,600 of the 24,036 units at risk were multi-family. This represented 15 percent of all units at risk. By 1999, approximately 70,000 multi-family units had active warranties, representing 78 percent of all units at risk. The 1999 figures are the Commission's estimates as NHW's data base, according to the former actuarial consultant, did not provide a breakdown between single-family units and multi-family units at risk.

II. The Business of Warranty

Residential construction warranty, as operated by NHW, was a promise to provide protection to the consumer for the quality of the home constructed by the builder. NHW ensured that the builder undertook repairs during the first year of the warranty, for deficiencies arising from materials or labour. For structural defects, which were covered by the warranty in years 2-5, NHW undertook repairs directly. If NHW felt the structural defects were a result of builder negligence, NHW could seek damages through the courts. This was seldom done.

NHW derived revenues from registration fees, enrollment fees on each unit registered, and interest income on reserve funds. Main expense categories included direct claims, indirect claims, litigation, builder-registration activities, education and training, marketing and public relations, accounting, and corporate overhead.

The main business goal of a warranty company is to maximize revenues (through builder registration and unit enrollments) while minimizing risk. Inherent in the warranty business is a trade-off between revenue maximization and risk. The maximization of builders/enrollments is accomplished through the application of underwriting philosophy, pricing, marketing, and public relations. Minimization of risk is undertaken by the application of underwriting philosophy, pricing, education and training, and claims handling.

Warranties sold in one year offer coverage that lasts for a far longer term. When NHW was operating, the majority of its coverage was 1 year materials and labour, 5 year structural damage. A 10-year product, with 3-year water penetration was offered, but few builders elected to purchase this extended policy.

Sufficient reserves must be maintained to ensure that any future claims obligations on unexpired warranties can be met. NHW had a Risk Retention Reserve which represented funds set aside for direct claims costs, and an Administrative Reserve, representing funds set aside for claims handling costs and ongoing administration of the business.

Prudent accounting requires the matching of revenue and expenses. Therefore, some revenue is brought into earnings over the term of the warranty contract. For each unit enrolled, NHW immediately allocated a portion to the Risk Retention Reserve. The balance was earned on the basis of 73 percent during the first year of the warranty, 7.3 percent for each of the next two years, and 5.15 percent for each of years four and five.

As future claims are unknown, they must be projected. Projecting future claims is part of the actuarial discipline. Claims forecasting is undertaken by examining data that may give rise to liabilities, then projecting that data into the future. Data giving rise to possible future liabilities include the coverage offered on unexpired warranties (book of business), historical claims frequency (number), severity (direct costs), administrative costs for claims settlement, and recoveries from litigation.[3] Assumptions regarding economic variables that may affect future

[3] Claims costs include direct repair, litigation, and reinsurance premiums, and indirect costs include non-discretionary administration related to complaints, claims handling, and corporate overhead expenses.

liabilities, such as inflation, are also incorporated into the analysis.

If projected claims costs are greater than reserves established to meet those projected costs, a funding gap exists. Funding gaps can be reduced through rate increases, decreases in expenses, an injection of capital from shareholders, and/or a bridge financing arrangement with an outside institution. If funding gaps are not addressed, and claims begin to mount, reserves will become depleted and insolvency may result.

III. Financial History

Over the 1990s, there was a series of critical events that increased the Company's risk exposure. Reinsurance coverage was gradually reduced until it was no longer part of NHW's risk management strategy. An extended five-year warranty was introduced for enrollments registered after January 1, 1990 (giving rise to potential claims beginning in 1995). Multi-family homes, as a percentage of total homes at risk, increased from about 45 percent in the early 1990s to about 75 percent in the late 1990s. This represented greater risk to the portfolio. Common property coverage limits on multi-family buildings and construction risks are greater than with single-family homes. However, multi-family builders were charged the same fees as single-family homebuilders.

According to NHW's agreement with builders, all units constructed were to be enrolled in the program. NHW's rating schedule was based on the number of units a builder enrolled and the length of time registered in the program, not on claims experience or building quality. The following excerpt is from Mr. Verge's testimony on January 12, 2000.

> ***Ms. Allan:*** *Do you ever recall looking at claims experience as a function of builders, which builders were experiencing those claims, as a form of claims management?*
> ***Mr. Verge:*** *No, that would have been a staff function. That would have been an operations department function that would have come under Ralph Moore and his staff.*
> ***Ms. Allan:*** *Well, I mean New Home Warranty was in the business of settling claims for damage to buildings. You don't ever recall having been curious or concerned or, even in terms of management information, in tracking experience, looking at claims that were coming in on the basis of builder activity, you never did that?*
> ***Mr. Verge:*** *Until 1998 there were many of those builder-developers in the high-volume category that had not had a warranty claim. There were others who had had claims and who had brought about restitution on their own, and there were others who, when claims were experienced, looked at sharing some of the costs with the warranty company. But how many of those, I really couldn't say.*
> ***Ms. Allan:*** *But how did you know that there was that experience?*
> ***Mr. Verge:*** *Well, staff would apprise me.*
> ***Ms. Allan:*** *In a written report?*

Mr. Verge: *Probably written - and oral.*
Ms. Allan: *Probably written. do you recall receiving a written report that identified claims experience, either in terms of low-volume claims or high claims, number or severity, that was identified on the basis of enrollment builder. Do you recall any written reports of that nature?*
Mr. Verge: *Not specifically.*

Builder rating classification ranged from Class C, B, A, AA, to a Master Builder. The following table identifies the breakdown of NHW's approximately 1,500 registered builders according to classification, and the per-unit rate paid, as of March 1999.

NHW Builder Rating

Table 1

Rating Classification	Percentage of Builders 1999	Rate Charged 1994-1999	Rate Charged 1985 -1993
Master Builder	7%	$185	$185
AA	6%	$215	$215
A	8%	$258	$235
B	10%	$302	$275
C	69%	$325	$295

Source: NHW.

In addition to graduated enrollment fee categories, NHW introduced, in 1985, a builder volume discount program for those in category "B" or better. The more units a builder constructed, beyond 60 per year, the greater the per-unit refund. The refund was not based on claims experience. This program was discontinued in 1996, except for Van Maren Construction, which was afforded the rebate for one additional year as part of its registration negotiations. From February 28, 1987 to February 28, 1997, NHW paid $327,342 to builders for volume discounts.

Through a review of some of NHW's files, the Commission learned that there were two builders, Polygon Properties and United Properties, that received a special rating of $150 per unit and $155 respectively. This special rating, which continued subsequent to the termination of the volume discounts was, according to Mr. Verge, in lieu of receiving volume discounts. The former registrar for NHW, Mr. Ed Tsumura, in testimony to the Commission, stated--as did a Board member, Mr. Doug Penzer, the current President of CHBA-BC--that he was unaware of this special rating. Apparently, this special rating was an agreement between Mr. Verge and these two builders.

The Board had provided the policy approval to allow for a rebate of premiums based on volume. And I think it probably fell within my purview to determine whether or not, if the builder wanted it out front, he could get it out front, or he had to wait until the end of the year to get it in the back end.

- David Verge, CEO, NHW
February 10, 2000

Up until 1998, those builders had virtually no claims....Whatever preferential rates that any builder had received would be subject to review, if there were claims experiences.

- David Verge, CEO, NHW
January 12, 2000

The Commission requested claims history, by builder. Both Polygon and United had claims experience which should have triggered a review of their preferential ratings. Polygon, in particular, had among the highest claims per unit enrolled of NHW's registered builders. Major structural damage claims (MSD) on Polygon-registered properties began to occur as early as 1995, whereas United began incurring MSD claims on multi-family projects as early as 1993.

It is interesting to note that fees were increased in 1993--the first time since 1985. Fee increases were applied to "C", "B", and "A" Builders, but remained unchanged for "AA" and Master Builders. This rate increase was not implemented for the purposes of building reserves to fund future claims; rather, according to the NHW Board Minutes of December 17, 1992:

An extensive discussion was held on continued long term financial support of RCI [Residential Construction Institute] and UDI [Urban Development Institute] educational programs. It has been determined that these programs cannot be funded at their current levels without increased revenue. It was noted that there have been no fee adjustments for seven years and a summary of revenue and expenses, with a fee adjustment was presented for consideration.

The rate increase was approved at the Board meeting of January 29, 1993, and it was noted that the increase was necessary to "*provide intensified service to the building community primarily through Education and Training programs funded through RCI and UDI.*"

Table 2 shows the range of rates charged from 1988 to 1998. Average enrollment fees represent the amount per enrollment arising from the mix of builder classifications. In addition to an allocation of the enrollment fee to the Risk Retention Reserve, NHW's Board of Directors would, from time to time, transfer funds from the Administration Fund to the Risk Retention Fund, in order to supplement the claims reserve.

The allocation to the Risk Retention Fund was, in fact, reduced by $15 per unit in 1991 to fund the marketing and public relations department at NHW. The $75 per-unit allocation to the Risk Retention Fund was reinstated in 1995. At this time, an allocation of $1.5 million from the Administration Fund was made to the Risk Retention Fund.

NHW Rates and Allocation to Risk Retention Fund
1988 - 1998

Table 2

Year	Enrollment Fees "C" - Master	Average Enrollment Fee	Allocation to Risk Retention Fund (Per unit)	Transfer from Admin to Risk Fund	Risk Retention Fund
1988	$295 - $185	$233	$75	$972,940	$4,551,665
1989	$295 - $185	$237	$75	$720,901	$6,279,815
1990	$295 - $185	$246	$75	$611,186	$7,884,800
1991	$295 - $185	$244	$60	0	$8,600,173
1992	$295 - $185	$243	$60	0	$9,071,604
1993	$295 - $185	$246	$60	0	$9,703,509
1994	$325 - $185	$277	$60	0	$10,842,347
1995	$325 - $185	$283	$75	$1,525,038	$13,255,005
1996	$325 - $185	$280	$107	0	$13,826,335
1997	$325 - $185	$280	$107	$1,472,700	$15,830,644
1998	$325 - $185	$284	$107	0	$15,837,479

Source: NHW (Year End is February 28.) Financial Statements were not audited for year-end February 28, 1999.

The Risk Retention Fund--the reserve available to cover claims--increased from $4.6 million in 1988 to $15.8 million in 1998. However, to assess if these funds were adequate for the risk underwritten by NHW, requires an assessment of a number of factors, including the number of units at risk; the increase in the cost to repair, due to inflation; the nature of the claims and, hence, repairs undertaken; new coverage limits offered over the period; and the mix of single-family versus multi-family--since multi-family represented greater exposure to the company.

NHW, which began as a single-family home warranty company, became a multi-family home warranty company. The underwriting, rating, registration of builders, and research and education activities of the company changed little to reflect this significant shift in product focus. The inability of NHW to accurately assess and reserve for its product mix and market focus would prove instrumental in precipitating its failure.

Table 3 provides a breakdown of the number of units at risk and the funds available to settle claims, on a per-unit-at-risk basis from 1988-1999. This is one way to examine whether the reserves available to pay claims were, in fact, increasing or decreasing. Multi-family units enrolled, as a percentage of total units enrolled for each year, are provided in this table because multi-family warranty is known to increase fund risk.

NHW Risk Retention Funds Available
1988 – 1999

Table 3

Year	Units at Risk	Multi as % of Total[4]	Risk Retention Fund	Funds Available Per Unit	Risk Retention and Admin. Fund	Total Funds Available Per Unit
1988	36,833	47.5	$ 4,551,665	$123.58	$5,763,804	$156.48
1989	41,429	47.5	$ 6,279,815	$151.58	$7,362,359	$177.71
1990	46,583	43.9	$ 7,884,800	$169.26	$8,957,909	$192.30
1991	44,311	48.4	$ 8,600,173	$194.09	$9,536,289	$215.21
1992	44,544	53.5	$ 9,071,904	$203.66	$10,079,434	$226.28
1993	47,614	71.1	$ 9,703,509	$203.80	$11,332,168	$238.00
1994	56,373	82.9	$10,842,347	$192.33	$14,188,800	$251.69
1995	64,847	84.2	$13,255,005	$204.40	$17,171,234	$264.80
1996	74,087	78.5	$13,826,335	$186.62	$17,805,252	$240.33
1997	82,681	75.9	$15,830,644	$191.47	$18,925,777	$228.90
1998	90,902	71.3	$15,837,479	$174.23	$18,788,647	$206.69
1999	84,885	72.1	$ 2,168,544	$ 25.55	$4,968,182	$58.53

Source: NHW

NHW does not appear to have taken into account inflationary pressures on repair costs until a factor of 3 percent per year is used in Mr. Paul Cochran's Funding Analysis for February 28, 1997.

Risk Retention Reserves available to settle claims, on a per-unit, at-risk basis, peaked in 1995--the same year the company experienced its greatest number of units (21,209) enrolled into the program. While funds available on a per-unit, at-risk basis, began to decline in 1996, the risk created by these enrollments, in certain circumstances, extended into the year 2005. In 1991, NHW introduced a ten-year, optional, Extended Warranty for Major Structural Damage. The introduction of Extended Warranty was approved at a Directors' meeting on March 22, 1991.

> *In accordance with direction given at the February Board meeting, Mr. Verge, in consultation with Mr. Fred McCreath, Actuarial Consultant, prepared and submitted a report in consideration of providing an extended five-year, optional MSD warranty through Registered Builders. The report presented some general comparisons on international warranty corporations, with the notation that extended warranties have all been created since 1986 thus, there is little historical data.*

[4] Multi-family as a percent of total, calculated on the basis of the number of multi-family units enrolled in a given year as a percentage of the total units enrolled in that year. A more appropriate method would be to take multi-family at risk as a percentage of total units at risk. However, NHW did not have this information available in its data base.

It was noted however, that considerable MSD occurrence data is (sic) available from those warranty corporations that have been providing 10-year warranties as a matter of course. In these instances, there is no indication that risk increases as the house ages.

In 1994, the Board was informed of the collapse of a US home warranty company, Homeowners Warranty Program (HOW), and concerns were raised regarding the similarity between HOW and NHW operations. In spite of this warning, there was no increase to the reserve fund. This issue is discussed in more detail in Section VII, of this chapter.

An insurance phenomenon called "moral hazard" may have been at work as a result of NHW's overemphasis on registering builders and enrolling units without a balanced emphasis on disciplined underwriting to ensure quality of design and workmanship, and adequate reserve practices to ensure sufficient funds for the claims costs. Moral hazard exists when a party believes they are protected by insurance--their behaviour becomes more hazardous than if they did not have the coverage.

Covered by warranty, builders may have adopted a more cavalier attitude toward their building practices, and in their responsibility to consumers, than if a warranty was not in place. The consequences of their actions were mitigated because of NHW's existence.

NHW was rating builders on the basis of the number of units they produced, not on the quality of construction. Some builders with the highest structural damage claims experience, paid the lowest average premiums, as explained above. Except for an initial inspection at the time of builder registration, NHW did not undertake site inspections until the last two years of its operation. NHW does not appear to have been in the habit of de-registering builders for high claims experience or raising premiums to builders who had a high claims-loss ratio.

Although the Commission was told that builders were required to meet NHW's technical and financial requirements, and demonstrate a track record during initial registration, there was no corporate or personal financial data in any of the NHW builder registration files reviewed by the Commission. Representatives of the company explained, during testimony, that financial data was not retained in the files, as NHW was concerned about client confidentiality. After requesting the financial information for initial review, NHW would destroy it, rendering follow-up analysis by underwriters, in subsequent years, difficult and time consuming. It appears NHW did not require ongoing financial information to be filed, except when the Registrar had a concern about the financial position of the builder.

NHW increased its demand for builder deposits over the course of its operating history, but these funds were typically returned to the builder after they had completed the requirements under the plan's one-year workmanship and materials component. It does not appear that they were retained for any costs inherent in major structural damage claims.

Although the Commission was told that personal guarantees were also required in certain circumstances, in a preliminary review of files no such guarantees were found. However, the Commission learned that one builder was returned his personal guarantees and given assurances that NHW would take no legal action of any kind. This correspondence is provided in Volume III - Documents, Part C.

The Commission heard testimony from a number of strata owners and industry representatives which suggested NHW's policies and practices were not in accordance with minimum customer service standards or sound business practices. National Home Warranty purchased the files of NHW and cooperated with the Commission's request to review some of these. The Commission also requested that Mr. Jim Morris, Regional Manager of Operations, National Home Warranty, appear at the hearings.

> *...New Home did not have the proper underwriting in place, nor the reserve requirements to support their existing business....Many of New Home's builder agreements were in the name of shell companies. There were no corporate guarantees of the principal companies or letters of credit. Also there was a general lack of project specific information on condo development....Enrollment in warranty fees were not based upon the performance of the builder, but rather upon who the builder was and the length of time they were in the program.*
>
> *- Jim Morris, National Home Warranty*
> *September 16, 1999*

IV. Reserve History

Although the financial insolvency of NHW became apparent on March 30, 1999, evidence of reserve funding inadequacy was apparent well before that. The question is, "Were reserves ever adequate for the multi-family risk underwritten?" In the years leading up to the leaky condo crisis, NHW was able to remain solvent because it recorded increasing enrollments and revenues as a result of:

i) a buoyant economy and housing market;
ii) a guaranteed market because CMHC required warranty coverage on properties qualifying for mortgage insurance; and
iii) market dominance because of CMHC's exclusion of other approved warranty providers allowing NHW to hold an effective monopoly in the warranty marketplace until the late 1990s.

Once NHW's enrollment rates began to decline--either because of a decline in housing starts, or increased competition from other warranty companies--financial pressures would eventually have been brought to bear on the company's position. NHW's rates were not high enough to meet the increasing risk it was underwriting. At no time, prior to 1997, does it appear that NHW took into account the affect of inflation on the cost of claims and claims handling.

For the fees NHW did collect, the proportion allocated to claims reserves--as distinct from administration reserves--was also not high enough. NHW was using a substantial portion of its enrollment revenues to fund general administration, rather than allocating it to the Risk Retention Reserve Fund, failing to ensure adequate coverage for future claimants.

NHW failed because it did not have sufficient reserves to pay its claims. Why didn't the Company have sufficient reserves? It was not because of the unforeseen leaky condo claims or a decline in the housing market, as suggested in NHW press statements but rather because the Company never properly analyzed the risk it was underwriting. Further, it did not make its business decisions based on providing adequate reserves for future claims. The leaky condo crisis contributed only to increasing the size of NHW's outstanding liabilities, and increased the pace with which its weaknesses were exposed.

The Directors attribute the insolvency of NHW to the leaky condo crisis which, they suggest, has its source in the BC Building Code. Citing Mr. J. C. Currie's letters to the provincial and federal government as their rationale for this argument, Mr. Jim Thomson has tabled with the Commission the Director's brief (see Volume III - Part C). The Commission's stance regarding this issue is discussed in detail in Chapter Three, Section III.

The following analysis illustrates that NHW had plenty of opportunity to establish adequate reserves. The Board, at various times, knew this yet failed to raise rates, reduce expenses, or request capital from CHBA-BC to maintain adequate reserves.

NHW's claims analysis was undertaken by Mr. Fred McCreath, a chartered accountant. Mr. McCreath, although not an actuary, gained his actuarial expertise through work undertaken on behalf of warranty companies across Canada and performed actuarial analyses for NHW from 1978 to 1999. On an annual basis, Mr. McCreath provided to the Board of Directors a Risk Management Report that outlined claims experience and administrative expenses for known activities as of the date under review. The reports also projected future claims costs as determined by historical claims experience and operating expense ratios.

The Commission requested copies of the NHW Risk Management Reports for 1985 through 1999, and obtained all but the 1987, 1990, and 1998 editions. These no longer seem to be available in NHW files. Detailed analysis was conducted on the reports from 1993 - 1997. Based on these reports, it appears NHW had a significant (and increasing) funding shortfall in each of the years reviewed--$3.9 million to $12.2 million from 1993 - 1997. Why was action not taken? David Verge and Fred McCreath have suggested in testimony and written response, respectively, that the claims projections provided to the Board were inflated because of a fear that the Board, CHBA-BC and UDI would apply pressure to reduce rates and deplete reserves. Oral assurances were given over the years that existing reserves were sufficient.

The following table presents a summary of the Risk Management reports from 1993 - 1999.

Risk Management Report Summary
1993 - 1999

Table 4

Year*	1993	1994	1995	1996	1997	1998	1999
Claims Projections	$16.4 m	$18.0 m	$21.6 m	$25.5 m	$29.7 m	N/A	$39.8
Reserves	$12.5 m	$13.1 m	$15.6 m	$16.4 m	$17.5 m	$18.8	$3.6 m
Per Unit at Risk	$262.53	$232.38	$240.57	$221.36	$211.66	$206.58	$42.41
Funding Gap	**$3.9 m**	**$4.9 m**	**$6.0 m**	**$9.1 m**	**$12.2 m**	**N/A**	**$36.2 m**

*As at February 28 year end. Source: NHW Risk Management Summaries and NHW Financial Statements. Reserves include Risk Retention Fund and Administrative Fund because claims projections include claims and administrative costs. The Reserves do not equate with Risk Retention and Administrative Reserve Fund in Table 3, as Mr. McCreath does not appear to have consistently included deferred revenue in reserves. 1998 reserves include deferred revenue.

The minutes from the Board meeting of February 8, 1991, state, *"In 1987 it was established that $300 per unit should be maintained in the Risk Fund. Today that figure has reached $170 and it was felt that good progress is being made to the ultimate safety goal."* However, rather than increase the allocation to reserves, it was agreed in the same Board meeting to allocate $15.00 per unit less to the Risk Fund in order to finance the marketing and public relations department.

The $300 per-unit target, set in 1987, was mentioned again in Executive/Audit Committee Minutes of May 18, 1993.

> *The question of dollar maximums required in the Risk Retention Fund was raised. Mr. Verge pointed out that there is currently approximately $9 billion at risk, not including surety guarantees and warranty surety guarantees on common properties. The figure is only for residential units. Mr. Verge also pointed out that only a fraction will manifest themselves into a claim. Allowing $300 - $330 per unit still at risk, the optimum figure for the Risk Retention Fund would be $15 million. With present Warranty coverage of $2 million maximum on multi-family projects, 4 projects with major problems would delete the current Risk Fund.*

NHW never reached a level of $300 per-unit, at-risk in reserves. In February 1998, total reserves based on NHW's own established criteria in the late 1980s, needed to be $27.3 million, not $18.8 million as recorded in the financial statements.[5] It is important to note that the $300 figure was nominal and, if adjusted for inflation at a conservative 3% per year, the requisite reserve funds in 1998, based on NHW's target, would have been closer to $415 per-unit, at-risk and a total reserve fund of $37.7 million.

The Commission researched Board Minutes from 1987 to ascertain the origin of the $300 per-unit target. At the meeting of May 11, 1987 it was stated:

[5] $300 x 90,902 units at risk = $27.3 million and $415 x 90,902 = $37.7 million.

Mr. McCreath further offered verbal data received from national and international warranty programs along with information received from Mortgage Insurance Corporation of Canada [NHW's reinsurance underwriter]. A lengthy "around-the-table" discussion ensued with the following motion...that the Program adopt the policy that $300 per unit be accepted, in the combined funds of Administration and Risk Retention, as the "comfort level" for reserves.

It is interesting to note that the Board Minutes of 1991 refer to the $300 per-unit target as relating to the Risk Retention Fund only; whereas the goal, when established, referred to the joint holdings of the Risk Retention Fund and Administrative Fund. Clearly, there was confusion over what was the actual target.

Board minutes often referred to the Risk Management Summaries and the need to ensure adequate reserves. Proposals for increasing reserves were promised, but not brought forward. Recommendations for rate increases were made, but postponed.

In respect of the Risk Fund the Board was advised that in due course a proposal will be presented which would provide for an acceleration of income allocation to risk management. Mr. Verge thanked Mr. McCreath for his presentation and offered observations that the growth in the Risk Reserve Fund, although still deficient, compared to the recently prepared actuarial report, is showing remarkable improvement in closing the gap between actuarial losses and projected reserves.[6]

On June 9, 1994, the Minutes noted that NHW had 65,000 homes at risk with a potential risk of $6.8 billion. It was stated that high enrollment rates were leading to healthy financial results, with no discussion regarding the growing risk inherent in NHW's portfolio. Legal Counsel, Mr. Robert Kuhn advised the Board that:

...extraordinary complexities of builder corporate structures has required more extensive review of applications (and more consultation from a legal and financial point of view). The complexities of soil conditions and construction requirements has (sic) a major impact on enrollment procedures and out of it all comes more complex complaint problems....New Home Warranty is being enjoined in legal action by groups (Municipalities, Architects, and Engineers) rather than Warranty initiating legal action..

These developments should have alerted the Board to anticipate greater claims and operating costs.

In speaking to the 1994 Risk Analysis Summary at the Board Meeting of April 28 & 29, 1994, the Company's auditor, Mr. Reg McKinley, commented on the projected funding gap. In a letter to the Commission explaining his comment, Mr. McKinley acknowledged that the figure in the Minutes should have read $18 million, not $19 million. At that time there was only $13.1 million.

[6] NHW Board Minutes, October 29, 1993, page 2.

In [Mr. McKinley's] opinion the risk analysis indicates that $19 million should be in the risk fund, but then if down sizing is required, administration costs would be lower.

There appears to be no further discussion in the Board minutes regarding the funding gap until 1998, and rate increases--although brought up during subsequent meetings--were never implemented. In 1995, the allocation of fees to the Risk Retention Reserve Fund was increased from $75 per unit to $107 per unit.

No fee increases for registered builders are included in the budget, although services have increased considerably....Seventy-five dollars per unit has been allocated to risk reserves. Existing data shows (sic) that this level of funding is insufficient to allow for continual growth in risk. Therefore, in the current budget, an allocation of $107 per enrollment has been set aside to risk reserves in recognition of additional risk...[7]

This reallocation provided no increased protection because rates did not increase. In fact, reserves available per-unit, at-risk, continued to fall. Later in the year, rate increases were again recommended, however:

Following Mr. Verge's report, the Board expressed concerns over fee increases and the possibility of losing builder registrants if the enhancements are implemented. Mr. Verge stated that he would revisit the actuarial analysis made to reach the recommended fee increase with the enhancements, and would submit his findings to the Board.[8]

Mr. McCreath stated in a written submission to the Commission on January 7, 2000 that:

I recommended a fee increase to the board of directors of New Home Warranty when I presented the 1995 Risk Management Summary. The increase was recommended based on the fact that claim costs during 1995 exceeded $1,000,000 for the first time in history and the ending of the insuring arrangement with MICC changed the ability of the company to absorb risk.

At the Board meeting in February 1996, fee increases were once again referred to, when the 1996 – 1997 proposed budget was introduced. *"Mr. Ziola presented the budget....It was noted that at the present time no fee increases are included....It was noted that there has only been one fee increase in the past ten years."*[9]

A year later, the Board struck a Committee that hired an actuary to conduct an analysis of NHW's reserves. By March 1998, Mr. Paul Cochran of KPMG in Chicago, filed his report on data for the

[7] NHW Board Minutes, March 30, 1995, page 3.
[8] NHW Board Minutes, October 12, 1995, page 3.
[9] NHW Board Minutes, February 8, 1996, page 3.

period ending February 28, 1997. Mr. Cochran had a mixed message for the NHW Board. Reserves seemed to exceed projected liabilities by $1 million as of February 1997. However, he stated that, based on trends, the fund would be in a deficit if updated through to February 1998. The Board took no action to address his funding concerns.

> *Mr. Cochran distributed a series of graphs on the estimated claims costs per enrollment and the estimated cost per claim with preliminary projections for 1998/99. Mr. Cochran concluded that the premiums collected for enrollments today are the same as 1993/94 and that the build up of the fund from the past has helped cushion the erosion. Mr. Cochran felt that the adequacy of the fund would be reversed if he were to do the same analysis today. He estimated that the average enrollment fee today would be $377.*[10]

The average enrollment fee in 1998 was $284, almost $100 short of Mr. Cochran's recommendation.

The Commission, in reviewing Mr. Cochran's subsequent actuarial analysis of March 30, 1999--completed in preparation for the proposal to NHW's creditors--noted a significant increase in NHW's projected liabilities, beyond those created by leaky condo claims. In particular, NHW faced $3.7 million from "claims in litigation," of which $2.7 million arose from claims prior to 1990. When questioned by the Commission about why these amounts were excluded from the February 28, 1997 Funding Analysis, Mr. Cochran explained that he was unaware of these liabilities until undertaking the March 1999 report. What this means is that, even with Mr. Cochran's analysis, NHW was not in a funding surplus in 1997.

It should also be noted that Mr. Cochran's February 28, 1997 report was a qualified report. That is, he expressed some concerns--in particular, the lack of claims history for the extended warranty on structural defects, and the fact that no additional allowance had been made in the report for extraordinary claims payments, resulting from water seepage and soil expansion problems. Had NHW wanted to use this actuarial analysis as proof of a funding surplus for regulatory purposes, the qualifications would have rendered it unacceptable as explained by Mr. Larry Neilsen, Deputy Superintendent, FICOM on January 6, 2000.

> ***Ms. Allan:*** *The reason that they needed an approved actuary was the work the actuary was going to do was to perhaps assist them [NHW] in getting clearance to become an insurer, is that correct?*
> ***Mr. Neilsen:*** *....They'd need to have audited financial statements, they'd need an actuarial opinion on those financial statements.*
> ***Ms. Allan:*** *But...audited statements would have to include an unqualified actuary's report; is that right?*
> ***Mr. Neilsen:*** *....If he gave a qualified opinion, that would be a bad thing.*

At the Board meeting of October 28 & 29, 1998, Mr. Verge acknowledged to the Board that per-unit enrollment revenues fell below the cost to the program of each enrollment.

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[10] NHW Board Minutes, March 12, 1998, page 2.

Mr. Verge suggested that if the government defers the implementation of the Homeowners Protection Act beyond 1 May, it would be prudent to come to the Board with a revised increased premium scale in order that recovery can start to be made.

The Commission questioned Mr. Verge regarding the origin of the $300 per-unit target and why it was never achieved. Mr. Verge was also asked about the funding gaps identified by the Risk Management Summaries. He explained that the target and the Risk Management Summaries were artificially inflated because of the pressure Board members, builder associations, and builders placed on NHW to reduce rates and reserves.

The $300 amount was one created by myself and Mr. McCreath....We set this artificially high figure as a negotiating stratagem with the homebuilders....As builders became aware of the size of New Home Warranty Reserves, there was mounting pressure on New Home Warranty to reduce warranty premiums. Further, builder associations mounted pressure on the company to provide financial assistance for their special projects. By using the criteria of $300 per unit, N.H.W. was successful in demonstrating the need for its reserves and deflecting pressure from builders and builder associations.

[Risk Management Summaries were the format developed] to properly record claims and develop a historic (sic) profile of claims data, since the inception of the company....In addition to recording historical claims data, the summary was used as a tool to justify the reserves being accumulated. I was under pressure from builders to reduce premiums and from builder associations to provide funding....Within the body of the risk management summary, a much higher standard of values to project future claims were (sic) used, as opposed to actual historical values.

- David Verge, Former CEO
February 8, 2000, Commentary to the Commission

Ms. Allan: *Now, I'm referring to your response...."We set this artificially high figure as a negotiating stratagem with the home builders." Which home builders are you referring to, Mr. Verge?*
Mr. Verge: *In this case, both individual builders and also builders who were members of the home builders associations.*
Ms. Allan: *Are you referring to any of the members of your Board that were also builders?*
Mr. Verge: *Yes, yes.*

In spite of the reasons underlying Mr. Verge's presentation of misleading actuarial information, the Board was presented with information that suggested there was a significant shortfall in reserves and very little action was undertaken to address this situation.

For many years NHW's audited financial statements included notes that stated the reserves were sufficient to meet future claims. Mr. McCreath, in a letter to the Commission on January 5, 2000, stated that such assurances were neither part of his contract nor did he provide the assurances to the auditors, as is suggested in the financial statements.

> *During the years that MH Financial Consultants Ltd. was retained to consult with David Verge in the preparation of the Risk Management Summaries, it was never a condition of the engagement that the reports would be needed to assist the auditors or to be relied on relative to the notes to the Company's financial statements. There was no specific discussion with David Verge or the auditors regarding the note to the financial statements .*

Mr. McKinley has confirmed that he did not speak to Mr. McCreath but received oral assurances from Mr. Verge that reserves were sufficient.

Mr. McCreath has stated that he felt the reserves were adequate until 1995, but that he urged rate increases during that year and thereafter, which included supporting Mr. Cochran's recommendation for a fee increase during his (Mr. Cochran's) 1997 Funding Analysis Report presentation to the Board of Directors in 1998.

Clearly, from 1983, when NHW began enrolling multi-family homes in the program, to its insolvency in 1999, management and the Board did not appreciate the nature of the risk being underwritten; the need for strict underwriting criteria; proper reserve projections; and adequate funding. NHW did not raise rates consistent with prudent business objectives. Revenues went to fund operating expenses, including marketing, and education and training, at the expense of adequate reserves in the Risk Retention Fund.

Management provided what it believed to be falsely-inflated claims projections and reserve targets because of the inherent conflict of interest between the Board and the business of warranty. [11] Undue pressure on limits in the reserve funds and inadequate rate increases over the life of the program contributed, in a significant way, to the failure of the program. NHW Board members apparently did not understand the projections, so when claims began to accelerate, they were ill-equipped to comprehend the changes or the implications for the future.

V. The Residential Construction Institute

It is possible that some of NHW's revenues were directed to education and training, and to marketing and public relations--not because it made good business sense, but because of the conflict-of-interest pressure Mr. Verge has identified. To examine this concern requires an

[11] Both NHW's CEO and risk management consultant have acknowledged making false reports to the Board. Having so acknowledged, they now claim in a table, never provided to the Board, that reserves were adequate. In discussions with Commission staff regarding this table, received January 5, 2000, the risk management consultant acknowledged that this new analysis was flawed. Mr. Verge, in a letter received by the Commission on March 3, 2000 restated this argument and attempted to rely on this flawed analysis.

explanation of the Residential Construction Institute; why it was established; funds that flowed into it from NHW; and how those funds were spent.

Prior to March 1, 1986, NHW provided a per-enrollment grant to CHBA-BC at the rate of $20 per unit with a maximum of $100,000 per annum.[12] On the basis of an opinion letter from NHW's auditor, which suggested a per-unit enrolled grant to CHBA-BC may be in violation of NHW's preferred tax status, the Board moved on January 29, 1986 that:

> *...any funding of Program undertakings by CHBA be on the basis of an approved budget submitted annually and payment shall be made upon receipt of an invoice, and that the current policy of payments based on Home Enrollments be discontinued, effective March 1, 1986.*

Notes from a meeting of January 26, 1987, which included the auditors from both NHW and CHBA-BC--as well as CHBA-BC tax specialist, NHW legal counsel, and Directors from both CHBA-BC and NHW--explain the rationale for the creation of the Residential Construction Institute (RCI).

> ***Topic:*** *Funding by Warranty of CHBA-BC Education and Research and Development Projects.*
> ***Concern:*** *a) Funds provided to CHBA taken into general revenues and used to pay general operating and normal overhead expenses;*
> *b) Tax and legal peril to Warranty - funding for R&D and Education could be construed as dividend payments, or shareholder payments, both contrary to Canadian Income Tax regulations in respect to non-profit corporations (Sec 149.1.1).*
> ***Resolve:*** *...CHBA-BC would create an "Education Trust" having a separate Board from that of CHBA Council....Warranty could provide funding to the "Education Trust"....CHBA would make any and all requests for funding for its operations from the "Trust" and no further direct funding would flow from Warranty to CHBA-BC.*

RCI was established as an "Education and Trust Fund" in 1987 with funds from NHW, MICC, Greater Vancouver Homebuilders, CHBA-BC, and a three-year matching grant from Employment and Immigration Canada. Subsequent to this initial funding, it appears that only NHW continued to allocate funds to RCI.

The Board of Trustees--established to monitor RCI--was made up of three CHBA-BC Directors, two NHW Board members, one solicitor for CHBA and NHW (Robert Kuhn), and a CHBA employee (Keith Sashaw). The work of RCI was determined by CHBA-BC. A "global funding" approach was adopted by RCI for CHBA-BC, with *"the entire request for funding re-worked to cover the costs associated with the delivery of all programs by CHBA-BC."*[13]

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[12] NHW, Board Minutes, January 24, 1985, page 2-3.
[13] RCI, Trustee Minutes, July 8, 1993, page 2.

Historically, in preparation of the budget, when it was determined what the cost of the programs would be and all other sources of revenue accounted for the next fiscal year, the total cost of services for the difference was factored in for the funding from RCI. That was why there was no consistency in the amounts of funding from year to year. RCI's mandate is not to provide a surplus for the association, but enough of a yearly commitment so that CHBA-BC will not incur a loss.[14]

Education and Training
1984 - 1999

Table 5

Year	RCI	UDI	Other	Total
1999	$0	$0	$0	$0
1998	160,000	25,700	0	185,700
1997	160,000	7,000	0	167,000
1996	160,000	20,000	0	180,000
1995	165,000	40,000	0	205,000
1994	290,000	38,500	0	328,000
1993	100,000	0	25,000	125,000
1992	85,000	0	20,000	105,000
1991	100,000	100,000	20,000	220,000
1990	104,300	0	20,000	124,300
1989	109,750	100,000	0	209,750
1988	99,750	0	0	99,750
1987*	99,750	0	0	99,750
1986*	100,000	0	0	100,000
1985*	52,660	0	0	52,660
1984*	13,240	0	0	13,240
Total	**$1,700,450**	**$331,200**	**$85,000**	**$2,215,650**

Source: NHW

* Research and Development Grant directly to CHBA-BC.

The Commission, in its review of RCI Minutes and reports, was unable to find any specific funding request for education and training from CHBA-BC to RCI. Nor were there any invoices or other statements from CHBA-BC to RCI, or from RCI to NHW.

Over the years, NHW contributed over $1.7 million to RCI. According to NHW Board discussions, the money was not considered by NHW to be well spent. November 15 & 16, 1994, minutes state, *"Mr. Verge pointed out the NHW has provided over $1 million to CHBA and UDI for Education and Training and yet the recommended topics, based on NHW claims analysis, are not being addressed."*

[14] RCI, Trustee Minutes, March 26, 1996, page 6.

On October 20, 1994, Mr. Verge wrote to Keith Sashaw of CHBA-BC stating:

> *New Home Warranty is an underwriter of construction risk. Our exposure to claims losses arises primarily out of defective construction and builder business failure. In the past four years we have seen our cost of claims for defective construction more than double from $400,000 in 1989 to over $800,000 in 1993. Claims for 1994 are expected to be well over $1 million. These costs do not include claims administration costs or general administration costs. When added to repair claim costs, these two administration costs increase overall claims costs by a factor of 2.9.*
>
> *In the same four-year period, New Home Warranty has provided well over a million dollars in sponsorship of industry E&T initiatives. When one examines our claims and support of education costs, it is reasonable to expect New Home Warranty to question the nature of programs currently being delivered and to whom, and whether or not, New Home Warranty should develop and deliver its own technical programs.*

Dissatisfaction with CHBA-BC's use of RCI funds continued as Minutes from the June 15, 1995 Board meeting show.

> *In discussion that followed it was pointed out that NHW is not receiving the desired level of E&T from CHBA-BC programs and the Company feels compelled to be actively involved in designing and presenting topics to augment CHBA initiatives.*

Although NHW funded RCI, as its education and training outlet for purposes of improving builder quality and mitigating claims costs, NHW had little discretion over the education and training agenda of CHBA-BC, or the payment of the contributions. NHW considered RCI contributions to be mandatory, as expressed by Mr. Verge in a memo to a NHW Director, Jim Thomson on July 21, 1998;

> *At our Board meeting of 25 June, I commented on our audited statements and the two large items over which we have no control - claims and contributions to Education and Training. I'm more sensitive to the circumstance in times of falling markets, where revenues from new business and returns on investments decline, and costs of business don't.*

The Minutes of the Board Meeting of CHBA-BC from April 20, 1999 perhaps best express why RCI did not undertake the requisite education and training. As Keith Sashaw stated, *"RCI was set up to allow CHBA-BC to operate."*[15]

Clearly, the transfer and use of funds from NHW to RCI and ultimately to CHBA-BC requires further investigation. As the Trustee's Report to the creditors of NHW points out, *"The*

[15] CHBA-BC Board Minutes, April 20, 1999, page 6.

Company's articles of incorporation and provisions of Section 149(1)(l) of the Income Tax Act preclude the payment of dividend, remuneration or other benefit in money or money's worth to any of its shareholders."[16]

VI. Marketing and Public Relations

NHW engaged in aggressive, and even misleading, marketing. Builders would include NHW in their own advertising materials, marketing their product as being covered by NHW and it was regularly suggested that NHW coverage meant that the home was built by a quality builder, since NHW set standards for builder registration.

NHW would also embellish its position in marketing materials. In a brochure, *Buying a New Home? (August 1997)*, it was suggested that, *"Warranty fees on your new home average about $400 and are paid by our Registered Builders."* The financial statements from the same year state an average warranty fee of $280.[17]

In an interview with Mr. Verge in Condo Guide Publications, March 1996, it was stated that NHW had *"paid claims nearing $14 million."* In testimony to the Commission, Mr. Verge stated that total cumulative claims paid to 1996 were $8.2 million. An advertisement in the Victoria Times Colonist on May 27, 1994, stated, *"We have paid out more than $9 million to settle claims during the past 18 years,"* whereas information provided to the Commission states $4.8 million.

In a full-page advertisement in the Vancouver Sun, Saturday June 14, 1997, NHW gave impressive assurances to the public about its efforts to protect consumers. NHW said they had paid out more than $30 million in claims in their history. On the other hand, figures filed with the Commission state $10.9 million as of February 28, 1997. Further, the ad suggests that NHW's qualified builders are vetted by *"stringent criteria to measure technical competence and financial stability of applicant builders to ensure that they have the commitment to build right and to look after their home buyers."*

In the Vancouver Sun, Saturday, September 19, 1998, a full-page advertisement, explaining the *Homeowner Protection Act* mandatory warranty coverage, suggested that, *"Many of our [NHW] Registered Builders offer this [2-5-10] coverage today and we encourage you to do business with them."* Very few of NHW's registered builders offered 1-3-10; none offered 2-5-10.

> *The New Home Warranty Program was a sham to begin with....I had learned, as did many other managers and condominium owners, that the program was, in effect, nothing more than a marketing scheme and definitely not a true and genuine warranty program.*
>
> *- Gerry Fanaken, Property Manager*
> *September 21, 1999*

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[16] Robert Rusko, KPMG, Trustee's Report to Creditors, NHW, Section 50 (10), September 8, 1999.
[17] NHW did have a 1-3-10 policy which cost more than the 1-5, however, very few were sold.

NHW marketing techniques also included the suggestion to builders that registering with NHW provided a form of liability insurance protection from homeowners. Recognition of this liability protection afforded to builders was contemplated by NHW during a June 1995 Board discussion of the court case, Winnipeg Condominium Corporation No. 36 v Bird Construction Company. In this case, the judge found against the builder for defects that appeared more than 20 years after the building was constructed.

> *It was felt that had this builder been registered with New Home Warranty, he would not have been found liable with the provision of a specific and expressed warranty. It is felt this type of action will likely increase and that NHW should use of this information as an advantage to registered builders.*[18]

In NHW marketing material, builders are advised of the liability protection available to them.

> *An independent third party warranty may be the best response to any legal dilemma where a builder may be exposed to liability for implied warranty of "good and workmanlike construction" on a project sold before absolute completion; and any obligation to subsequent purchasers of residential units for "negligence" in construction, resulting in potentially "dangerous" circumstances.*[19]

The marketing strategy pursued by NHW was focused on increasing builder registrations, ultimately increasing home enrollments and, hence cash flow. NHW's marketing focus was on "quality, security and workmanship," [20] and its registration meant that "a warranty builder should be proud to tell his purchaser that as a warranty builder he has been thoroughly checked out at registration and thereafter."[21] However, the NHW registration process was not applied to vet out poor quality builders, since NHW was consistently concerned about losing any potential registrant.

> *Recently, NHW was contacted regarding a charitable organization that has purchased land in Maple Ridge through a numbered company. This organization will be constructing a life lease multi-family building for sale to the public. This is far from an ideal application, but to decline it will likely result in the competition gaining enrollments."*[22]

Consistently, throughout NHW's Registration/Operations Reports, the main reason cited for de-registration was due to non-renewal of the contract. Despite the testimony given to the

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[18] NHW Board Minutes, AGM, June 15, 1995. Discussion of this case in this manner speaks to the inherent conflict of interest of the Board as this perspective is from the point of view of a builder rather than a director of a warranty company with claims mitigation as its major focus.

[19] New Home Warranty Information Bulletin, What's in it for the Builder? August, 1995.

[20] NHW Board Minutes, April 22, 1991, page 3.

[21] NHW Bulletin, What's in it for the Builder?, August 1995.

[22] NHW Operations/Registrations Report for the Board, June 20, 1997.

Commission, the Commission has been unable to find any confirmation that NHW de-registered a builder for lack of construction quality.

As part of its research into the education and training expenditures of NHW, the Commission requested a list of all funds provided to UDI during the past two years of NHW's existence. In addition to the funds provided as listed in Table 5 above, NHW charged other expenditures paid on behalf of UDI to the Marketing and Public Relations budget. These activities appear unrelated to NHW business. An example is a charge of $35,703 for advertising expenses related to UDI's activities in opposing Bill 44 on labour relations.[23]

NHW Public Relations Budget
1988 – 1999

Table 6

Year	Expenditures*	Public Relations	PR as a % of Expenditures
1988	$ 997,914	$136,934	13.7
1989	1,313,615	185,872	14.2
1990	1,482,752	304,324	20.5
1991	1,539,524	209,240	13.6
1992	1,671,650	313,796	18.8
1993	2,087,177	441,362	21.1
1994	2,758,569	512,470	18.6
1995	3,231,450	576,123	17.8
1996	3,161,777	371,004	11.7
1997	3,059,940	406,593	13.2
1998	3,514,127	489,457	13.9
1999	2,994,154	413,500	13.8

Source: NHW
* Excluding direct claims costs.

VII. US Warranty Company - HOW

As mentioned above, in 1994 concerns were raised over similarities between NHW and CHBA-BC, compared to HOW and NAHB. The Homeowners Warranty Company (HOW) was one of the largest new home warranty programs in the United States when it was forced into receivership by regulators in 1994. HOW was established in 1973 by the National Association of Homebuilders (NAHB), a trade association of homebuilders and affiliated entities. NAHB owned HOW until 1981, when it transferred its stock to the Home Warranty Corporation (HWC), a non-stock membership corporation. In the same year, HOW Insurance Corporation (HOWIC) was established as a risk retention group to underwrite the HOW Program. All three companies--HOW, HOWIC, and HWC--were operated as a single-business enterprise.

[23] Letter from Maureen Enser, Executive Director, UDI to David Verge, December 15, 1997.

In 1991, the Virginia Bureau of Insurance began an investigation into HOW's financial status, which led to the Bureau--with court approval--taking over as receiver and instituting all actions deemed advisable in the rehabilitation or liquidation of the HOW companies.

Complaints, including fraud, misrepresentation, and breach of fiduciary duty were filed in the courts against fifteen former officers, directors, and employees of the HOW companies. The Receiver also alleged that the arrangement with NAHB was so pervasive as to effectively make the HOW program an extension of NAHB.

The Receiver sought compensating damages in excess of $100 million, as well as substantial punitive damages and other relief. It was alleged that the defendants illegal and improper conduct resulted in the insolvency and hazardous financial condition of the HOW companies.

> *The topic of the largest US warranty corporation demise--the Home Owners Warranty (HOW)--was opened. The State of Virginia Insurance Commissioner's Office have (sic) prohibited HOW from honouring previous commitments as well as from writing any new business. The State has determined that HOW is $45 million short of the amount needed for HOW to meet its future obligations.*
>
> *The HOW situation is considered extremely important in light of the Options document [Discussion Paper on Future industry regulation] and Mr. Verge has made every attempt to obtain as much information as possible.*[24]

Mr. Robert Kuhn, legal counsel for NHW, provided the Board with the following report in 1997:

> *Two documents were distributed to the Board: "The State of Texas Bureau of Insurance vs HOW, et al, and the State of Virginia Bureau of Insurance vs HOW, et al. Mr. Kuhn provided a comprehensive explanation of these US supreme court cases and drew the Board's attention to the similarities in the relationship between HOW and NAHB and the relationship between NHW and CHBA-BC.*
>
> > *HOW = Home Owners' Warranty Corporation, the largest new housing warranty corporation in the United States until 1994. These companies are now in receivership.*
> > *Et al = Home Warranty Corporation, Home Owners Warranty Corporation, HOW Insurance Company, named Directors of these companies, and named Officers, and staff.*
> > *NAHB = National Association of Home Builders, American counterpart of CHBA National.*
>
> *The issue at hand in the US is the alleged actuarial incompetence of HOW in not retaining a sufficient risk fund to meet potential liabilities, and the misappropriation of funding between HOW and NAHB.*

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[24] NHW Board Minutes November 15-16, 1994, page 3.

....Mr. Kuhn was strong in his recommendation that the NHW Board of Directors examine carefully the relationship between CHBA and NHW, and he is prepared to make some recommendations at the next Director meeting.[25]

The Commission reviewed the minutes of the next Directors' meeting and every meeting thereafter. It was unable to find any reference to Mr. Kuhn's recommendations or any other matter related to the US HOW - NAHB situation. Even with warnings raised in 1994 regarding a parallel situation in the US, no action was taken to improve the financial strength of NHW.

VIII. Water Ingress Problems - Warnings of Leaky Condos

Increased costs from water ingress claims became apparent by February 1994, although concerns regarding water seepage are noted in the Minutes of Board meetings as early as May 17, 1988. *"The most contentious issue on record at the moment is with regard to an 18 story high-rise with water seepage occurring through its elevations."*

A great deal of discussion was held during the Board meeting on February 4, 1994, because of a noticeable increase in the frequency of Major Structural Defect claims. These were a result of water penetration, undetected for several years. Since these claims did not result from lack of maintenance by the homeowners (an approach NHW seems to have employed during an early phase in settling these claims as a way to limit their liability), NHW could not deny them. A growing number of claims *"were related to exterior stucco finishes and the claims were noted to be most prevalent in multi-family housing where design does not provide for generous overhangs."* Mr. Verge and Mr. Grelish agreed to highlight this problem with education and training. Mr. Verge also said he would meet with UDI to encourage them to *"pick up the same banner."*

Mr. Verge noted that, *"New Home Warranty does not want to prepare corrective programs, but will continue to identify problem areas and work with the Education and Training committee and UDI for resolve."*[26] It is unclear why NHW did not want to ensure corrective action by builders was taken to limit future exposure. A more forceful approach to building design practices, taken by NHW, could have limited the problems experienced today. The Commission has learned that the Education and Training focus of CHBA-BC and UDI did little to assist in the identification of the sources of the problem--let alone their solutions.

Moisture problems are also discussed in Board minutes in February 13, 1992, where they were *"referred to the Technical Advisory Committee of CHBA-BC, CMHC and UDI for their consideration."* Again, on June 11, 1992, *"there was considerable discussion of 'water' problems in construction and the integrity of membranes. Mr. Verge stated New Home Warranty is very cognizant of this problem and is endeavouring to do something about it."*

NHW did not want to prepare corrective programs for the water ingress problems, which had

[25] NHW, Board Minutes, January 17, 1997, page 4-5.
[26] NHW Board Minutes, February 4, 1994, page 2.

been evident to the company for more than two years. However, education seminars beginning in 1994 were undertaken by NHW staff. NHW's letter to UDI, and other industry participants including municipalities, architects, and engineers, outlining the problem and requesting funding support to examine these problems, resulted in very little response. It is unclear why NHW did not elect to use appropriate design, construction, and application procedures as part of its registration of builders, particularly when it had the power to do so.

Reference was again made at Board meetings in November 1994 regarding serious stucco and water penetration problems. This led to further discussion of the need for education and training programs. However, *"concern was expressed that Warranty builders have not made an effort to subscribe to education programs."*[27]

NHW recognized in the late 1980s it had major structural damage problems arising from water ingress. Structural building envelope failure from water penetration happened quickly--some buildings registered with NHW in the early- and mid-1990s had MSD claims within two years of construction. NHW does not appear to have taken any action against builders once severe claims began to arise. NHW did not even collect information pertaining to water ingress problems until mid-1998 when staff manually culled files to identify them. Earlier collection of this information would have supported an understanding of the trends in leaky condo claims. Although the numbers are relatively small in the 1980s, leaky condo claims, as defined by NHW, began to occur in 1982.

IX. Claims Handling Practices

During the first Commission hearings, many presenters characterized NHW's approach to claims handling and claims settlement as being an exercise in futility. The terms and conditions of the coverage were stringent. Rules regarding the starting date for coverage--particularly multi-family buildings--could result in the materials and labour portion expiring before all homeowners had moved into the building. Also, the five-year structural damage term was often insufficient to meet the needs of homeowners who experienced such damage related to water ingress. The coverage many people thought they had was not the coverage they, in fact, had. For example, if NHW did effect repairs for structural damage, it repaired only the parts of the building which were structurally damaged, leaving repairs of any other damage, or potential damage, to the strata council. Having conducted partial repairs, the term of the coverage would then become one year, regardless of how many years had been left on the warranty.

> *First of all, it [NHW] was made up and controlled by the very people that built these bloody, rotten condos. My personal experience had been a nightmare. The council and myself were threatened on several occasions that if we sought legal counsel, they would withdraw from the job. It took us over a year after reporting suspected problems to get them involved, and when we took off a section of wall we were constantly asked, "Why did you do this?" and, "We won't pay for that portion of the work." When they did accept responsibility for it, it was for a*

[27] NHW Board Minutes, November 15 and 16, 1994, page 6.

limited portion, because they didn't want to find any more. When I repeatedly asked them why they were terminating repairs in the middle of a wall, and sections, and only doing a band-aid repair, they told me that was all they were willing to accept responsibility for.

- Rudy Eylmann, Condo Owner
September 13, 1999

Until February 1998, when Mr. Jerry Vander Mey was hired, NHW had one Technical Representative responsible for such claims. Upon appropriate application, a Technical Representative would conduct a site inspection, qualify the claim, write up a report, and issue the decision. Since NHW required proof of structural damage, the building envelope needed to be exposed. Sometimes there would be three or four visits before the strata could "prove" the structural damage existed. In explaining to the Commission why claims projections in the March 30, 1999 actuarial report were significantly larger than the August 31, 1998 actuarial report, Mr. Cochran, in his letter of January 6, 2000, confirmed NHW's claims handling approach as one of the reasons.

...management informed us that the publicity surrounding leaky condos had led to greater "discovery" efforts by the condo associations. For example, whereas in earlier claims a single corner or wall had been repaired, associations were now "invading" other areas of the condo to seek out leakage that ordinarily might not have manifested itself for several more years. Historically, such claims might not have been discovered until after the warranty had elapsed.

Mr. Vander Mey, in testimony December 14, 1999 explained the process.

Mr. Leask: *....What's the proper size that should be stripped away for you to make an examination?*
Mr. Vander Mey: *Approximately 1-foot-square....If they opened up the one test opening, we could only do a report on one test opening. So in fact if the strata wanted to claim the balance of their building, they should have opened more test areas in different locations, and generally, they should have talked to an engineering firm or someone that was familiar with building envelopes in order to open up the appropriate areas.*
Mr. Leask: *....Was that common [to have a consultant]?*
Mr. Vander Mey: *Not in the beginning.*
Mr. Leask: *Did it become common?*
Mr. Vander Mey: *More so, yes.*
Mr. Leask: *....We've heard evidence about an earlier period in New Home's existence where there appeared to be a much higher rate of refusing claims.....Did the other people in the organization who knew about your work ever expressly approve, disapprove, or comment on your rate of approving claims?*
Mr. Vander Mey: *Yes....They [Mr. Jan Rasilainen and Mr. Mike Knoll] were saying, "Well, OSB really isn't structural." and I'm going, "Well, you're absolutely wrong, from an engineering standpoint. OSB is structural." And so I*

believe that a number of the claims prior to my arrival at New Home Warranty could have been rejected just on the sheer case that it was just the OSB that was deteriorated.

Once a claim was accepted, a letter would be sent to the strata council outlining the approved work. NHW would hire a contractor and the work would be undertaken. Often, NHW would approve only a portion of the repair work, since they were responsible only for the MSD portion. However, since the problems were related to water penetration, the strata often found itself in a position where work needed to be undertaken to avoid MSD in the future.

Mr. Leask: *Did New Home make any effort to work out a cooperative plan between New Home and the strata and the contractor?*
Mr. Vander Mey: *Not initially....The policy was, "We'll fix our bits; they can do their bits."*
Mr. Leask: *Did that policy ever change?*
Mr. Vander Mey: *Yes....We had discussions in the office....I advised them it would save the strata corporations money....[and] if you did a complete envelope repair using a contractor with an engineer, [and there's a future problem] at least you know where to go back to.*
Mr. Leask: *Did there come a point in time when the policy was changed?*
Mr. Vander Mey: *Yes....Probably around May or June [1998]....The new policy was that if the strata corporation wished to join in the repairs, that I could facilitate that.*

During the final year of NHW's operation, it appears claims handling practices for multi-family condominiums changed dramatically. Not only were types of claims being accepted which seem to have been rejected in the past, but also the pace of claims handling improved. The Commission had questioned Mr. Verge on May 8, 1998 about the impact of leaky condo claims on NHW solvency and what this type of change in processing might do to the Company. The Commission was assured that reserves were sufficient to handle an increase in consumer awareness and claims.

Ms. Allan: *Well, my concern is that part of what we've been hearing is that one of the reasons why there are fewer claims settled through New Home Warranty is that the consumer wasn't fully aware of what they purchased. What's happening in this process is the consumer is becoming very aware of what they purchased, and that knowledge could, in fact, change your claims experience, and I'm wondering if you are going to be solvent in that event?*
Mr. Verge: *Oh, I would suggest so. I don't suspect for a moment that the severity of our loss experiences in the future is going to be much different than what it is now.*
Ms. Allan: *But you do have reserves, based on actuarial...*
Mr. Verge: *We, we have, we have...*

X. The Final Year

NHW received a Funding Analysis from Paul Cochran, KPMG actuary, in early 1998. This report was reviewed at the March 12, 1998 Board meeting. The analysis concluded that NHW's funding level of $18.9 million was sufficient to meet the indicated liabilities of $17.9 million. However, the following concerns were noted:

1. Lack of claim payment history in years six to ten introduces a greater than normal amount of uncertainty (NHW had extended coverage which took effect in 1996 and, therefore, there was no real claims history against which to estimate future liability).
2. Investment income was not taken into account, and was considered to provide a contingency for the uncertainty identified in 1) above (investment income was $1.6 million in 1997. One or two MSD claims arising out of the six- to ten-year coverage could easily have cost that amount).
3. Leaky condo claims and soil expansion claims were not explicitly identified, nor were additional allowances made for those types of claims (NHW had experienced both types of claims for a number of years but did not begin to collect information to identify them explicitly until August 1998).

The qualifications identified by the actuary give NHW ample warning that the funding "surplus" may be extremely vulnerable. What the actuary did not identify were the potential liabilities NHW faced as a result of claims against the company being made through court actions. Many of these cases had arisen from claims for homes enrolled prior to 1990. NHW estimated these claims to be $2.7 million. The Commission contacted Mr. Cochran regarding this liability and he explained in a letter dated January 6, 2000.

> *As part of our discussions with management, we inquired as to claims for enrollment periods prior to 1990. The reply was that, since there was only a five-year warranty for those periods, all of the warranties provided for enrollment periods prior to 1990 already had expired. We assumed that there was no remaining liability for enrollment periods prior to 1990.*
>
> *For the March 1999 report, we became aware of a category of claims referred to as "claims in litigation." We asked for, and received, a listing of these claims with an estimate by the Program's attorney of the likely ultimate cost of these claims to the Program. Of the 23 "occurrences" (multiple claims of the same nature and housing projects were combined), five were claims for enrollment periods prior to 1990. We accepted the Program's estimate of $2.7 million as the ultimate cost of these claims and included them in our final reserve estimate under the category "claims in litigation".*

Had "claims in litigation" been incorporated in the 1997 Funding Analysis, it appears NHW would have been in a deficit. The need to include estimates of exposure for litigation claims against NHW is even more important given that Mr. Cochran included an estimate of recoveries (claims

against builders and other parties) in the 1997 Funding Analysis of $654,780. The recoveries estimate was based on NHW's history of recoveries.

NHW Direct Claims and Reserves
1998/99

Table 7

Month	YTD Direct Claims Costs	Monthly Incremental Claims Costs	Risk Retention Fund (millions)	Direct Claims Forecast (millions)	Funding Gap (millions)
March 1998	$ 303,978	$303,978	$15.7	$16.6*	($0.9)
April	$ 664,175	$360,197	$15.5	n/a	
May	$ 1,269,906	$605,731	$15.1	n/a	
June	$ 2,806,736	$1,536,830	$13.7	n/a	
July	$ 4,178,786	$1,372,050	$12.5	n/a	
August	$ 5,686,482	$1,507,696	$11.5	$19.3	($6.8)
September	$ 6,815,962	$1,129,480	$10.5	n/a	
October	$ 8,045,501	$1,229,539	$ 9.5	$21.9	($12.4)
November	$ 9,557,807	$1,512,306	$ 8.1	$23.5	($15.4)
December	$10,338,019	$780,212	$ 7.4	$24.3	($16.9)
January 1999	$12,527,762	$2,189,743	$ 5.4	n/a	
February	$15,627,287	$3,099,525	$ 2.2	n/a	

Source: NHW Financial Statements. MH Financial Claims Summary Analysis and KPMG. *KPMG Actuarial Analysis: note $16.6 million for March 1998 is a Commission estimate in that it includes February 1997 projected claims plus 1998 actual claims. A projection for 1998 does not appear to have been undertaken until August 1998 by MH Financial Consultants. In January 1999 Mr. Cochran tabled a Funding Analysis as of August 1998, with leaky condo claims to November, included. Mr. Cochran provided a range of claims estimated of between $13.9 million and $18.9 million; this was close to Mr. McCreath's August projection.

As mentioned above, Mr. Cochran warned the Board of Directors that, if he had undertaken an analysis using March 1997 to February 1998 claims and administrative costs, the funding level would be inadequate. A rate increase was recommended. Although the Commission requested a copy of Mr. Cochran's analysis on rates, which was part of his terms of reference, NHW did not have a copy in its files. However, the Board Minutes from March 12, 1998 state that the recommended increase was an average of $93 per enrollment--a 33 percent increase.

This suggested rate increase was made on the strength of claims experience to February 1997 and in the absence of adjustments for leaky condo claims experience, which NHW suggested took them by surprise during the period March 1998 - February 1999. Faced with financial pressure, even without leaky condos, and a report from a consulting actuary from outside the province, NHW's Board elected not to increase rates.

Although Mr. McCreath has stated he supported Mr. Cochran's suggested rate increase, none of the executive or Board members questioned by the Commission recall a vote on the matter, nor

do they recall the details of the discussion.

Essentially, NHW's Board and management entered its final year without the benefit of a funding analysis reflecting the company's current position (although the actuary suggested a gap would exist if one was undertaken). The Board and management also believed that NHW's reserves had been adequate in February 1997, even though potential liabilities suggesting otherwise had been excluded from the analysis.

As of February 28, 1998, NHW had $18.8 million in reserves and 90,902 units at risk (the greatest number in its history) with $206.58 per-unit, at-risk available to meet claims--its lowest level since 1990. These funds would quickly be eroded.

The Commission heard extensive testimony from Mr. David Verge, the CEO until his resignation on March 25, 1999, and Mr. Jim Thomson, the interim CEO and Chair of NHW. It was suggested to the Commission that as early as 1997, NHW had intended to become an insurance company. As recently as mid-1998, NHW wanted to continue in operation under the new legislative framework required by the *Homeowner Protection Act*, whereby all warranty providers would need to seek approval from FICOM as qualified insurance providers. NHW, Mr. Verge suggested, would require only $3 million in clear capital to qualify. Because of the financial position of NHW, there was no evidence to suggest the Company had $3 million in clear capital, particularly in 1997 or 1998. Upon detailed questioning on November 23, 1999, Mr. Verge clarified NHW's intent by explaining that, *"it wasn't part of a strategy...it was a, let's say, more of a wish."*

NHW's monthly financial statements clearly show that by September 1998, the Company's financial strength had been eroded by $5 million--a gap which would have to be closed if NHW was to continue as a going concern. These figures would have been available to management and the Board by late September. On November 23, 1999, Mr. Verge explained that NHW did not feel, because of market conditions, it was practical to try creating additional revenue to offset the problem. Rather, the Company decided to seek an insuring partner.

> *Discussions took place...with London Guarantee, that they would be the insurance license holder, they would issue the warranty insurance policies, and all of the administration and the technical support, and that other infrastructure, would be provided by New Home on an administrative fee-formula basis.*

In late December 1998, negotiations began in earnest with London Guarantee and continued until March 1999. NHW's financial condition continued to deteriorate over this period. By the January 28, 1999 Board meeting, NHW's December financial statements reveal a year-to-date deficit of $7.7 million, with only $7.4 million remaining in the Risk Retention Reserve. December claims projections from MH Financial suggest a demand on these reserves of $24.3 million (excluding administration expenses), suggesting a funding gap of $16.1 million.

KPMG's August Funding Analysis was available for the January Board meeting and projected $13.9 to $18.9 in claims against the Risk Retention Reserves, or total funds required of $19.8 to $24.7 million. In August 1998, Risk Retention Reserves were $11.5 million and, including the

Administrative Fund, $14.8 million. Based on Mr. Cochran's report, NHW was deficient $2.5 million to $7.4 million for direct claims liabilities and $5.0 to $9.9 million for all liabilities.

During testimony on January 4, 2000, Mr. Verge explained that Mr. Cochran's Funding Analysis *"included data for September, October, and November [1998]."* However, when questioned on this matter Mr. Cochran wrote to the Commission on January 6, 2000 and explained:

> *Prior to finalizing our report, we also received additional leaky condo data through November of 1998. We took into account the trends we observed in the number of paid claims, the average cumulative paid amounts, and the average incremental paid amounts....Based on discussions with the Program's management, there was no evidence at that time that the claims "in progress" were significantly different from those in the historical data.*

The inclusion of September to November trends, rather than claims data, in the Funding Analysis is different than what Mr. Verge suggested. It is unclear whether the Board fully appreciated the information they were being provided or the state of NHW's exposure. An appropriate use of Mr. Cochran's report would have been to acknowledge that it presented a picture of NHW's situation as of August 1998 when the Risk Retention Fund was $11.5 million--not November 1998, when the Risk Retention Fund was $8.1 million.

To imply that Mr. Cochran's report portrayed NHW's position in November 1998, raises a question as to whether or not NHW was taking steps to paint a picture of claims diminution. Mr. Verge stated that claims frequency and severity was beginning to decline in late 1998, suggesting the worst might be over. On January 12, 2000, Mr. Verge stated:

> *New Files Opened Per Month...show[s] throughout the year, the number of new files on new leaky condominium buildings, both in terms of numbers and in claim payments. And if you look from June of 1998, there were 12 new buildings with claims that were part of the record, and from there it went down significantly from six--the following month, seven; the following, six. And then we come towards the end of December, and I'm going into January and February where these two large amounts appear in the record. There was only one new claim in January, and there were three claims in February. And I think that suggests very strongly the point I think that was made earlier about the continued diminution in the number of new claims being experienced. But it also goes on to suggest very strongly and, in trying to recall from memory, that the significance in terms of these dollars that were recorded in those two months were as a result of a reassessment of previous claim records....By March the worst was over...and from that time on, everything would be manageable.*

Mr. Jerry Vander Mey told the Commission on December 14, 1999, that his superiors instructed him to lower the estimates on repairs during the fall of 1998 and that, beginning in August 1998, officers began withholding from him--and other technical representatives--the monthly numbers they were in the habit of receiving and reviewing. These identified the number and dollar

payments for all claims.

> ***Mr. Vander Mey:*** *...we would get a chart indicating the amount of claims both in condominium envelope as well as first year...*
> ***Mr. Leask:*** *And you didn't prepare the totals, you prepared claim-by-claim estimates. Somebody else put those together and made a total number.*
> ***Mr. Vander Mey:*** *That's correct.*
> ***Mr. Leask:****.....And then although you continued to work for the company in the same job from September 1998 through March 1999, you were no longer shown the claims totals?*
> ***Mr. Vander Mey:*** *That's correct.*
> ***Mr. Leask:*** *In the few months after you stopped getting the numbers, you asked for them a number of times?*
> ***Mr. Vander Mey:*** *That's correct.*
> ***Mr. Leask:*** *After you'd heard different explanations, you stopped asking?*
> ***Mr. Vander Mey:*** *Yes.*
> ***Mr. Leask:*** *....Were you ever directed to increase or decrease the amount of claims spending that you were authorizing?*
> ***Mr. Vander Mey:*** *Yes....Started about September, I believe....Jan Rasilainen would come back to us and say, "Your estimates are too high. You have to bring them down to where the Board can accept them.*

NHW was experiencing significant claims costs through 1998 with a noticeable reduction in December. In testimony, Mr. Verge explained that NHW decided to delay repairs in the winter because previous experience had proven winter repairs to be very expensive. This was inconsistent with his statement that NHW had never experienced claims of this nature before. Unless a claim was approved, which means a contractor has been given approval to begin repairs, it would not register in NHW claims data. The diminution in numbers and severity that Mr. Verge observed may have been due to a change in claims handling procedures during the early winter months, not any real decline in claims incidence.

A confidential memo from Mr. Verge to the Board of Directors, February 10, 1999, regarding detailed leaky condo claims information stated:

> *You will be interested in seeing details of leaky condo claims costs for the problem years 1997 - 1998. Note the dramatic decline in leaky condo claims after June 1998 (only weeks after the Barrett Commission Report was published). We believe the worst is over, and are taking steps to be aware of how another extremely wet winter will impact our future year.*

The financial information provided with the memo shows a dramatic decline in claims costs from September to December 1998 which is inconsistent with the rising claims costs in the monthly financial statements.

As part of the preparation for the creditors' proposal, Mr. Cochran also prepared an actuarial analysis as of March 30, 1999. This report suggested NHW unpaid claims would range from $26.8 million to $53.4 million with a mid-point of $41.1 million. Mr. Cochran was asked to explain how projections could increase so significantly from the mid-point of $16.3 million, estimated in August 1998; particularly since he reviewed claims trends to November 1998.

> *In our March 1999 report, there were two contributing factors to the increase in our estimates. The first was the more than two-fold increase in the average paid leaky condo claim from claims paid in the December 1998 to March 1999 time period compared to those paid in August to November 1998 period....Management informed us that the claims "in progress" at the time of our August 1998 report had been settled for amounts far in excess of what had been expected....The second factor was an increase in our estimated number of future claims yet to be paid....**In addition, a backlog of uninvestigated claims had built up in the preceding six months** (emphasis added).*

Information on claims and financial trends, provided to the Board from August to December, was misleadingly positive than what was real because of actions taken to slow down the pace of claims entry into record keeping. That is, even though NHW's financial solvency was deteriorating quickly, a backlog of--what would prove to be valid claims--was also developing.

Notwithstanding the mounting future financial obligations, NHW, in January and February 1999, was faced with a significant financial deficit. In testimony, Mr. Verge acknowledged that by late December he was aware of at least a $14 million shortfall. When asked about the strategy to meet this shortfall (as compared to the $5 million in August), Mr. Verge explained that both the pending agreement with London Guarantee and the anticipated recoveries from legal actions, were thought to be sufficient.

An agreement in principle between NHW and London Guarantee, dated March 19, 1999 established a joint venture, whereby NHW would provide the administrative support to London Guarantee on a fee-for-service basis.

Could NHW have reasonably anticipated cash flow from the joint venture sufficient to meet its claims payment and claims handling obligations? The Commission reviewed the projected cash flow from the joint-venture agreement between London Guarantee and NHW. Over a five-year period, net cash flow was projected to be approximately $6 million. That is, NHW would have had slightly over $1 million per year to allocate to its funding shortfall.

There was no indication from Mr. Verge that any attempts to provide financing for NHW's claims obligations had been forthcoming. Mr. Verge suggested, however, that the cash flow was overly cautious because significant economies could be reached through cost cutting. On the other hand, Mr. Cochran, in his August 1998 report, undertook an analysis of administrative costs, related to claims handling under a "run-off" scenario; his bare-bones administration estimate is consistent with the cash flow analysis.

The question regarding recoveries from court action was explored extensively with both Mr. Verge and Mr. Thomson. In testimony on January 12, 2000, Mr. Verge explained:

> *...legal counsel had been given instruction to commence actions against the developers, their architects, and their insurers to recover on all of the claims that New Home Warranty had paid out in attempting to address this tragedy....We certainly had in mind somewhere around two-thirds [recovery of costs], at least 65 cents on the dollar....And counsel, in addressing the Board of Directors, gave the Board every assurance that the Company was entitled to collect on those losses based on the nature of the claims and the indemnities that were contained in the contract that the Company had with the builders, and the builder-developers involved, in my estimation, were in a financial position against which to recover either from them and their architects and engineers directly and/or with their insurers....Somewhere between 50 and 65 cents on the dollar...and based on projections that would be somewhere between $12 and perhaps $16 million.*

In earlier testimony on January 12, 2000, Mr. Verge had suggested the recovery amount estimated by Mr. Kuhn was "dollar-for-dollar."

NHW had very little history of successful recovery, particularly for major claims. In Mr. Cochran's actuarial analysis of February 28, 1997, recoveries are estimated at $654,780, on the basis that historically, "*amounts have been relatively small compared to claim payments....We have selected a recovery amount of $420 per claim.*"

In the August 1998 report, Mr. Cochran notes:

> *...recoveries on leaky condo claims may exceed historical levels due to increased securitization from builders during the past few years as well as increased recovery efforts. We are advised that the Program has instituted or instructed their legal counsel to commence and/or proceed with a substantial number of legal actions to seek recovery from third parties with respect to payments made on account of claims paid. We have not adjusted our estimates to reflect these potential higher recoveries.*

During testimony, Mr.Verge and Mr. Thomson noted that they discounted Mr. Cochran's actuarial analysis because he had failed to include recoveries. On January 10, 2000, Mr. Jim Thomson explained to the Commission:

> *Well, the draft report that we received in, I guess, December of 1998...I think showed...a shortfall of between $5 and $10 million. However, there were a number of issues that we were receiving advice from experts...that caused us to have some questions about that....Mr. Cochran said in his report...that he had a very small allowance for recoveries, I think something in the magnitude of about $400,000. When I asked about that, Mr. Cochran said, "Well, they could well be*

higher, but the trouble is, as an actuary, there is limited data that I could go from. What you would be better prepared to do, is to speak with people who have better knowledge about those recoveries." And I did. I spoke with Bob Kuhn, and based on his experience in litigation on these issues, he expected a much higher....That the recoveries would be significantly higher....The number of around $5 million, $5 to $6 million, in recoveries.

It is important to remember that the $5 or $6 million in recoveries being spoken about, relate to a different period than the $5 to $10 million shortfall identified by the projections in Mr. Cochran's report. Mr. Cochran's report is for August 1998; by December, the Company was in a funding gap of about $16.9 million. This is the funding gap to which the $5 to $6 million in recoveries more likely apply. The timing discrepancy in the information is critical, and may not have been something of which Mr. Thomson was fully aware, as he explained to the Commission during hearings January 10, 2000.

Ms. Allan: *In December 1998 New Home Warranty's reserves were down to about $7.5 million. Were you aware of that...the fact that the deficiency would have been severely affected because reserves were being run down over the fall of 1998? Or was that not something that you were aware of at the time?*
Mr. Thomson: *It's not something I was aware of.*

If recoveries had been anticipated on such magnitude, the question becomes, "Why did NHW declare insolvency?" That is, if recoveries were going to save the day with a $24 million claims liability projection in January and February, why wouldn't it save the day with a $30 million claims liability projection in late March? Why trigger insolvency?

The Commission requested the legal recoveries grid--designed to support recovery action estimates--which had been provided by legal counsel to the Board and management. The Commission was denied this information on the basis of solicitor-client privilege. Neither the former Board of Directors of NHW, nor the Trustee, Mr. Bob Rusko, KPMG, would agree to waive this privilege. In the absence of being provided the data, the Commission has pieced together recovery information that is available.

As of February 28, 1998, the financial statements of NHW provided assurances that recoveries, both for and against NHW, were immaterial. Note 10 states: *The Company is involved in various legal and warranty claims. As of the date of the audit report, legal counsel and the management of the company are unable to accurately estimate the amount or likelihood of gains or losses arising from these claims.*

The Commission requested the auditor, Mr. Reg McKinley, to review his working papers and advise as to the status of recoveries for year-end February 28, 1998. The auditor wrote to the Commission on December 10, 1999 stating:

Representations presented to us by NHW relating to legal actions for the fiscal year ended February 28, 1998, indicated the following:

Total actions...in which NHW [is] the defendant $3,790,000.
Total actions...in which NHW [is] the plaintiff $2,548,000.
Total estimated exposure...with respect to actions in which they were the defendants $430,000. Total estimated recovery in actions in which they were the plaintiffs was $100,000.

The Proposal to Creditors filed October 8, 1999, provides an estimate of both recoveries for, and litigation claims against, NHW. When questioned at the Commission hearings, NHW executive and Board members did not appear to be well informed about litigation claims against NHW. Perhaps, just as Mr. Cochran was unaware of "claims in litigation" (much of which arose from warranties sold prior to 1990) until he prepared his 1999 Analysis of Outstanding Claims Liabilities and subsequently learned of this risk from counsel, the Board and executive may have also been unaware of this exposure.

Schedule "A" of the Proposal to Creditors includes Recovery Action Receipts of $4.7 million, estimated by counsel to arise from legal action against builders and others. This figure is very close to the $5 or $6 million recovery estimate identified by Mr. Verge and Mr. Thomson. The schedule also has a recovery estimate of $3 million related to future claims. This figure is based on a claims projection of approximately $20 million--hardly a 50-percent recovery rate.

Finally, as mentioned above, Mr. Cochran included in his liability analysis $3.8 million for claims in litigation against NHW ($2.7 million for claims prior to 1990). That is, based on the information available to the Commission at this time, the net difference between anticipated recoveries and claims against NHW, prior to March 30, 1999, is $900,000 ($4.7 million - $3.8 million).

XI. Declaration of Insolvency

On March 25, 1999, Mr. David Verge left his letter of resignation with the Company's accountant along with his keys and corporate credit cards. He walked out after twelve years without notifying his chairman or colleagues as explained in testimony November 23, 1999.

Ms. Allan: *...what was the content of that letter [of resignation]?*
Mr. Verge: *It said, "I hereby resign effective immediately."*
Ms. Allan: *....There was no move on your part to embark on any kind of succession planning for your departure, to leave New Home Warranty with a CEO in place?*
Mr. Verge: *No.*
Ms. Allan: *....Did you call your chair? Did you have an oral conversation with him about your plan to depart?*
Mr. Verge: *No, I just left.*
Ms. Allan: *....Did you consider that your departure might have an effect on the negotiations [with London Guarantee]?*
Mr. Verge: *There was nothing to suggest that my leaving might prejudice that in*

any way.
Ms. Allan: *By the time you left, had the agreement with London Guarantee been called off or was it still in process?*
Mr. Verge: *It was still in place.*

Mr. Jim Thomson on January 10, 2000, outlined the series of events that precipitated NHW filing a letter of intention to make a proposal to creditors under the *Bankruptcy and Insolvency Act*.

> *I'm the former chair and acting president for a very brief period of time. I stepped into the chair on October 29, 1998 and took over as acting president, I think on March 26th, when Mr. Verge resigned. 25th or 26th....I was given from Fred McCreath...[he] told me the bottom line was about a $30 million shortfall....I said, "Well, there's no way I'm going any further with this." And that's why I did what I did.*
>
> *....I was in a state of shock....I thought we had just concluded a deal with London Guarantee that would have been quite successful....Later the same day [I] find out the president had resigned....We did what we thought was the responsible thing to do.*

Earlier, during the same testimony, Mr. Thomson explained he had no idea the financial troubles of NHW were as extensive as they were.

> ***Ms. Allan:*** *Did you ever think there was a $15 to $20 million deficiency that the company was facing prior to March 25?*
> ***Mr. Thomson:*** *No....had I thought that, I would have pulled the pin....When we talked to the consultants, and they said, "Look, there's a very good possibility you can see your way through this." and we also talked to legal counsel about what our obligations were, they said, "Your first and foremost responsibility is to the company and to try and keep it afloat, and if you're receiving advice that you can do that, that's what you should be trying to do." And that's what I tried to do.*

If indications were that NHW could weather its financial problems, it is unclear why minutes from the January 28, 1999 Board meeting include the establishment of a $500,000 fund to defend Directors in the event of legal action, and a request of Mr. Verge to investigate improvements in the Directors and Officers Insurance coverage to $10 million, including protection against actions arising from policyholders. During the January meeting, it was also agreed that the Company set aside sufficient resources in trust with legal counsel to protect the Company's employee salaries and benefits in an amount equal to six months.

On March 30, 1999, Mr. Jim Thomson, then Chairman and Acting CEO of NHW, announced that the Company, under the *Bankruptcy and Insolvency Act*, had submitted notice of intention to file a proposal to its creditors. The press release accompanying the announcement stated: *"The move is similar to filing for Chapter 11 in the United States, and will afford the organization*

temporary protection from its creditors while it seeks to restructure." A proposal would be prepared by NHW management, for the review and approval of creditors and, if approved, would then go to a judge for final approval--with creditors to be paid in accordance with the proposal. NHW did not seek to restructure.

In justifying the actions of the Board of Directors, Mr. Thomson noted that *"last Thursday, we received a claims analysis report that showed total repair estimates for current and future claims would be considerably higher than previously thought."*

Mr. Thomson's subsequent affidavit states that *"until Thursday March 25, 1999, it appeared to me that the Program could weather the increased claims associated with the leaky condo crisis. However, on the afternoon of Thursday March 25, 1999, I received information which indicates that the total cost of known and projected future warranty claims would be considerably higher than I had previously thought."* This was confirmed in a news conference on March 30, 1999, when Mr. Thomson told the media that an actuarial report he had received the prior week showed that NHW could not continue to operate.

Mr. Thomson stated in testimony on January 10, 2000, that the actuarial claims report consisted of *"about three or four spreadsheets [prepared by Fred McCreath], and at the bottom right-hand corner on one of them there was number in the magnitude of $30 million [deficiency]."* This was the nature of the report that precipitated the Company's insolvency.

However, posted on the NHW website, under the heading *"Frequently Asked Questions: New Home Warranty Proposal to Creditors,"* comprehensive details were provided which were claimed to be derived from this new report. The details provided on NHW's website under "Frequently Asked Questions" did not come from a new actuarial analysis or from Fred McCreath's spreadsheets. These had been prepared by a media consultant hired by NHW, after the company announced its insolvency.

At no time did the NHW Board of Directors request approval for their action on insolvency from their owner, and sole shareholder, CHBA-BC. However, CHBA-BC did approve the sale of NHW's assets on April 14, 1999. For all intents and purposes, this sale closed the doors to any future restructuring. CHBA-BC may have been negligent in its governance duties with respect to the failure of NHW. There may not have been a proper resolution by CHBA-BC to approve the insolvency proceedings as explained by Mr. Keith Sashaw, former COO of CHBA-BC, during his testimony, February 21, 2000.

XII. NHW Bankruptcy - Trustee Developments

The Directors of NHW, filed with the Official Receiver at the Office of the Superintendent of Bankruptcy on September 8, 1999, a proposal under Part III of the *Bankruptcy and Insolvency Act*. Subsequently, a creditors' meeting was held on October 7, 1999, where the proposal was approved. The NHW Directors resigned, and the Trustee, KPMG, along with five inspectors, appointed by the creditors, are administering the proposal.

A KPMG actuarial report, commissioned by NHW as of March 30, 1999, estimated outstanding claims and concluded there was a range of exposure from $26.9 million to $53.4 million. It should be noted that this estimate includes claims only, not related administration costs, as was provided in the actuary's report of August 31, 1998. The Trustee provided the estimated administrative costs to settle future claims and provided these in Schedule A, below. Compared with the August 31, 1998 report, direct claims costs projections increased $13 million in the low end of the range and $34.5 million in the high end of the range. The reasons for this dramatic increase were explained in Mr. Cochran's letter of January 6, 2000, including a two-fold increase in claims paid from December 1998 to March 1999 as compared with August 1998 to November 1998 and a backlog of uninvestigated claims.

In its proposal to creditors, NHW stated that it anticipated a $0.42 on the dollar distribution to creditors and that it *"had made its best efforts to make a reasonable estimate of its future asset recoveries and future liabilities so as to allow for an early payment to creditors. The ultimate amount available to creditors is dependent on the realization of assets, costs of administration, and the amount of all proven creditors.* ***There is sufficient risk that these estimates may not materialize as projected."***

The following table shows the calculation of the entitlement for creditors.

NHW
Proposal to Creditors

Table 8

Gross Amount Available For Distribution	
Cash	$10.5
Income Stream from Sale of Assets to National	2.1
Recovery Action Receipts	4.7
Recovery Action Receipts from Future Claims	3.0
Security Deposits Forfeited	.5
Builders Security Deposits	1.4
Total	**$22.2**
Administration, Trustee and other costs	**$4.0**
Estimated amount available for creditors	**$18.2**
Amount owning to Creditors	$42.8
Entitlement to Creditors	**42 cents**

Source:NHW Proposal to creditors, Attachment A.

The proposal to creditors included an early payout of 25 percent of the 42 cents to creditors, based on estimates that current and future warranty claims would be about $42.8 million. However, the bankruptcy trustee stated that nearly $130 million in "proof of claims" had been

received against the assets of NHW. This was more than three times the actuarial estimate. Until the claims filed against NHW could be examined in detail, the bankruptcy inspectors and trustee have suspended the preliminary payment to creditors.

XIII. Summary of Findings

The primary reason NHW failed was because of the company's ownership and corporate structure. All Board Members were builders; the majority of which were drawn from current and past executive of its sole shareholder, CHBA-BC. This created a conflict of interest where Board members appeared to have acted in their interest as builders, not as prudent Directors.

As a provider of multi-family warranty on almost all multi-family construction in the province, NHW did not inspect construction on the buildings it registered; did not increase premiums based on claims history; did not de-register builders based upon poor design or shoddy workmanship; and did not require sufficient guarantees for major structural damage. NHW engaged in embellished marketing, lax underwriting practices, and inordinate claims denial, contributing to a deterioration in the quality of construction among multi-family builders.

The final year of NHW's existence marked a significant change in its claims handling practices. In marketing, NHW was held out to be solvent and financially stable when the Directors and Officers knew, or should have known, that NHW was in a hazardous financial condition. There is evidence which suggests NHW approved claims knowing the company could not settle them. There is also evidence which suggests NHW knew, or should have known, that it was insolvent. However, staff was allowed to continue selling warranty coverage.

By concealing the true financial condition, NHW artificially prolonged its corporate life, deepened the insolvency, and substantially harmed the home-buying public. New Home Warranty of British Columbia, Inc.:

1. failed to ensure adequate warranty coverage by failing to set rates which were sufficient to cover the risk insured, thus failing to show fiscal responsibility;
2. failed to establish and maintain reserves adequate to pay all insurance risks and future losses, thereby failing to deliver on the promises the company made when offering their product to the public; and
3. caused, or permitted, the depletion of assets, that should have been available to claimants, by wrongful allocations to CHBA-BC through the Residential Construction Institute (RCI).

Part II - Volume II Recommendation #1: The Attorney General's Department conduct a forensic audit of New Home Warranty, the Canadian Home Builders Association of BC, and the Residential Construction Institute.

Chapter THREE

The Building Code

Building Codes clearly specify that water should not be present in building envelopes.

> *Exterior walls shall be protected with siding (cladding), including flashing, trim and other special purpose accessory pieces required for the siding (cladding) system being used, to restrict the entry of rain and snow into the wall assembly.*
>
> *National Building Code, Section 9.27.2.1, Required Cladding, 1975 - 1999*
> *1985 BC Building Code, Section 9.28.2.1.; (9.27.2.1 1992-1998 Code)*[28]

> *1) ...where a building component or assembly is exposed to precipitation, the component or assembly shall*
> *a) minimize ingress of precipitation into the component or assembly, and*
> *b) prevent ingress of precipitation into interior space.*
>
> *BC Building Code 5.6.1.1.(1) 1998*

> *Exterior wall cladding shall be so installed that it sheds water to prevent its entry into other components of the building assembly. Where there is a likelihood of some penetration, drainage shall be provided to take water to the outside.*
>
> *BC Building Code, Section 5.4.5.1. 1985 and 1992*

I. Introduction

> *...if a failure has been identified as being due to ingress of precipitation, then that building has not complied with the building code.....The building envelopes, as designed, would have failed almost regardless of where the buildings were built.*
>
> *- Adaire Chown, Senior Technical Advisor, NRC*
> *January 13, 2000*

Understanding is the first step toward a solution--toward creating a sound and sustainable residential construction industry. This chapter outlines building code issues by drawing on numerous presentations and submissions--including research reports and scientific evidence--received by the Commission. Recommendations for the future are also made.

Numerous presenters, including strata council representatives with commissioned engineer studies, architects, engineers, and warranty providers, told of building envelope failures as a result of poor or inappropriate design and shoddy workmanship. Not one example was brought forward

[28] The Commission recognizes that the list of cladding materials does not include stucco explicitly and recommends that this be added to the list of cladding materials in the BC Building Code for clarity.

where such buildings had been built to code. Instead, code violations were seen to be the reason for the failure of the buildings.

> *In front of me, here, is a 400-page report of a condominium project in New Westminster with a remediation of $8.5 million, and throughout it are documents signed by President and Director, Andre Molnar, Quayside Developments....In this 400-page document, the only blame of the building code that are alleged by the architects that did this analysis for the strata council, are 469 violations of the code are alleged. Not one mention of the actual code itself being at fault.*
>
> *- Chuck Puckmayr, Concerned Citizen*
> *October 14, 1999*

In its first report (pages 18 - 26), the Commission extensively discussed the Building Code and its role in the construction performance of residential buildings--both single and multi-family.

The BC Building Code and Vancouver Building Bylaw are based on the National Building Code (NBC)--a voluntary document for application by provincial authorities. The NBC is intended to be used as a model code in order to create a relatively uniform set of building standards nation-wide. As outlined in the *Constitution Act*, building regulation is a provincial responsibility, and the BC Building Code is a provincial document applied throughout the province, except for the City of Vancouver. Vancouver has its own building code--the Vancouver Building Bylaw. Therefore, we not only have a "Made-in-BC Code," we also have a "Made-in-Vancouver Code."[29]

In the first Barrett Commission report it was stated that:

> *The Provincial Code is intended to represent minimum standards regarding life safety, health, and structural sufficiency of buildings. It is neither a textbook on building design, nor a criterion for quality or workmanship.*
>
> *- Barrett Commission, 1998, page 19*

Following numerous presentations and submissions from professionals, building officials, contractors, and building organizations, including UDI and the CHBA-BC:

> *The Commission was unable to find evidence that the building code, per se, has caused the problems. It agrees that the BC Building Code outlines appropriate performance standards for large buildings, as well as prescriptive standards for smaller buildings and homes. Where the building code may have failed is in the definitions of large and small buildings. This has resulted in a number of large, complex, wood-frame condominiums being built under the guidelines for smaller*

[29] Up until the adoption of the 1998 BC Building Code and the Vancouver Building Bylaw, the difference between the two codes was inconsequential, particularly as they relate to residential building envelopes. The 1998 codes were adopted subsequent to the first Barrett Commission report which called for as much similarity in the two codes as the authorities could accept. The differences between the two new codes, particularly with respect to face seal and rain screen, makes a distinction between them necessary in this report.

buildings. ***However, even under the prescriptive approach, the buildings should have been well constructed.***

- Barrett Commission, 1998, page 20

It was clear during the first set of hearings, as well as the recent ones, that there is confusion within the building industry in understanding and interpreting what is required by building codes. There is also confusion and misunderstanding regarding the nature of the leaky condo problem. Although discussion surrounding air barriers, vapour barriers, permeance, and poly are all interesting, they are not relevant to the problems facing British Columbia's building envelope failures. Building envelopes are failing because litres of water are entering the walls from the outside through poorly designed roofs, balconies, and windows; because of badly constructed joints, missing flashings, inappropriately lapped building paper, and thinly-applied stucco.

Diffusion is transfer of moisture in humid air to drier air, there is no air movement. Diffusion is measured in nanograms, that is 1 billionth of a gram, every second, mind you, but it's still a very small quantity. Rainwater is measured in litres.

- Pierre Gallant, Engineer
November 1, 1999

It is very important to understand the distinction identified in Mr. Gallant's testimony, as was identified in the testimony of other engineers, architects, and technical experts. The problem we are facing in British Columbia is due to wind-driven rain entering the building envelope through major design and/or construction flaws, and remaining in the envelope to such an extent that the building integrity is compromised. Whereas diffusion deals with nanograms, and air flow deals with grams, the water penetration problems of leaky condos involves litres. Litres of water should not be entering building envelopes. The issue we need to deal with is why these buildings are leaking, not with the rates of drying.

There has been no evidence that building envelopes, constructed according to the building code, will fail. The Commission is aware that some building envelope systems, certain design approaches, and combinations of materials are conducive to higher standards than others. However, according to the extensive testimony received from numerous professionals, if the Building Code is followed, with a requisite understanding of building science, the building envelope systems will work.

On January 6, 2000, Mr. Pierre Busque, Engineer, presenting on behalf of UDI, with assistance from Dr. Achilles Karagiozis, and Dr. John Straube, showed computer-modeled test results regarding vapour diffusion. It was suggested that if walls are wet when they are installed, they may have more difficulty performing well in BC than elsewhere. However, Section 9.3.2.5 of the BC Building Code is very clear that wood should not be wet when installed.

Ms. Allan: *If you knew what you were doing with the code in 1985 and 1992, there was nothing prohibiting you from building wall assemblies properly?*
Mr. Busque: *With part 5, totally agreed.*

Ms. Allan: *With respect to part 9?*
Mr. Busque: *....If the materials were dry at the beginning of construction, then the wall would have worked, even under part 9, yes.*
Ms. Allan: *And in fact, to meet the 19-percent [moisture] requirement of the code, you would want to make sure that when you put the wood in, it was dry or had been drying properly?*
Mr. Busque: *That's correct. The only problem that I see is that when we build a building...it can get wetter during the construction process, and if there's a rush to apply the inside vapour barrier before the wood is dry, then you're sealing that moisture in.*
Ms. Allan: *Now does the code restrict the pouring of concrete when its raining?*
Mr. Busque: *....I don't know. I don't think so.*
Ms. Allan: *....one would expect wood practice could be just as prudent, to not put walls in when it's raining?*
Mr. Busque: *Absolutely.*

The knowledge of how to construct buildings that are reasonably dry is already known. Developers need to start with that understanding.

The Commission believes that it is the developer who should ensure that a qualified construction team is hired to undertake the work--including architects, engineers, construction site superintendents, and on-site workers. All construction-related staff--from the design team to the construction crew--must understand how to use the Code, vis-à-vis their role and responsibility.

The architect's responsibility is to ensure proper design and implementation of design details on site. Engineers are to ensure the building science is appropriate for the exposure. Both professionals are required to understand and appropriately interpret the Code. The municipal inspector's responsibility is to approve plans for permit purposes and undertake on-site inspections to ensure the Code is not violated. Developers should see the benefit of building to Code and having on-site inspections as mitigating their future liability. On-site staff must be qualified to undertake their work in a way that maintains quality building standards and practices. For example, qualified electricians, as part of their training, are not only taught electricity, they are taught how to use the Code as the rule book for the minimum standards. Why should we not expect the same standards from construction workers?

The Commission is aware that the residential construction process failed in numerous situations. The Commission recognizes that education--the transfer of building science knowledge--is the key to ensuring these failures do not happen in the future. Recommendations were made in the first report to address this lack of skill and decision-making ability. Further recommendations will be made in this report, subsequent to a detailed review of code issues below. The Commission is hopeful that the Provincial Advisory Council of the HPO, and a reinstated Buildings Standard Branch, will satisfactorily address the need for reviewing issues and effectively coordinating understanding to assist the industry in carrying out its role and responsibility.

Ms. Allan: *So in your opinion, is the building code the problem?*
Mr. Cressey: *Point blank, is the building code the problem? My personal opinion? No.*
Ms. Allan: *...in fact, would you say it's the interpretation of the building code?*
Mr. Genest: *...it's the interpretation of the building code. With each municipality having a different interpretation of that code...we're trying to deal with fire issues, or we're trying to deal with seismic issues, which all may relate to the building envelope, but there's not a coordinating factor to bring all of that together.*

Scott Cressey, Rick Genest, Olga Ilich, Maureen Enser, UDI
November 1, 1999

II. Commission I - Recommendations

The Commission recognized, in its 1998 report, that steps needed to be taken to improve the interpretation and application of the BC Building Code and the Vancouver Building Bylaw, as well as the process for determining code content. The recommendations from the first Commission's report (#7 - #16) are provided below for review, with comments regarding the current status of their implementation.

> ***Recommendation #7: All Part 5 (Wind, Water, and Vapour) requirements of the BC Building Code be applied to all multi-unit, residential buildings, greater than two stories in building height, or larger than 600 square metres in building area (regardless of fire walls).***

The 1998 BC Building Code was adopted without this requirement. The Commission still has concerns that complex, multi-family buildings are being constructed under Part 9 (prescriptive), which is less clear about the standards of care and attention that exist in Part 5. As a result, due care and attention to quality can be overshadowed by other considerations. Part 5 requirements clearly confer on the builder, architect, and engineer greater standards than those in Part 9. It is also important--if Part 5 is going to become the standard, but that Part 9 can still be employed by the designer--that proper professional accreditation also be applied to the building process. Therefore, the Commission recommends the following revised recommendation #7.

> ***Recommendation #7 (revised): Part 5, with the associated professional design and review criteria, be applicable to all residential buildings greater than 2 stories in building height, located in geographic regions susceptible to wind driven rain, with such regions to be defined by the Provincial Advisory Council.***

The Commission is aware that the City of Vancouver Building Bylaw requires that any multi-family building greater than two units be constructed under Part 5. However, recognizing that such a requirement may be unnecessarily onerous on industry participants, the above definition is suggested.

Recommendation #8: All multi-family buildings facing renovations to the building envelope be renovated under the provisions of Part 5 of the BC Building Code.

In general terms, the essence of the Code is such that if alterations are being undertaken, such alterations must be in compliance with the existing code. Therefore, Recommendation #7 (revised), would apply to building envelope repairs.[30]

Recommendation #9: That the Vancouver Building By-law be reviewed with respect to applying Part 5 requirements to buildings, and to renovations for building envelope failures, to all multi-family residential buildings greater than two stories in building height or larger than 600 square metres in building area (regardless of fire walls).

The City of Vancouver applies Part 5 to buildings greater than two-family dwellings, taking the above recommendation a step further than the Commission originally suggested. The Commission commends the City of Vancouver for taking the lead in this regard but urges the provincial code development process to carefully consider adopting Recommendation #7 (revised).

Recommendation #11: That the Education and Research initiative be charged with the responsibility for:

- ***i) research and development of best building practices and techniques;***
- ***ii) ensuring that the advances in building science technology are clearly identified, agreed to, and disseminated to all parties responsible for design and construction of residential buildings;***
- ***iii) the approval of the designation requirements for Building Envelope Specialists prior to the endorsement of this specialty;***
- ***iv) the review, interpretation, and recommendations regarding the building code; and***
- ***v) assist in the development of key issues related to the residential construction market.***

The *Homeowner Protection Act* (Section 12) provides for the above, except for explicit approval of the designation of Building Envelope Specialists in (iii). Currently, the Association of Professional Engineers and Geoscientists of BC (APEGBC) and the Architectural Institute of BC (AIBC) have a Building Envelope Professional (BEP) designation which excludes anyone except an architect or engineer from the designation (the terms "professional" and "specialist" appear to be used interchangeably at this point in the development of these professionals).

The Commission sees some limitations in the minimal field exposure offered in the training program and the exclusion from the designation of other technicians with extensive training and experience. The Commission suggests the BEP, as it currently exists, is only a step towards the

[30] In an effort to remove all confusion regarding this point, it may be advisable to amend the definition of "alteration" in Part 1.1.3.2 of the Code to include "renovations, remediation, and/or repairs."

training and education necessary to ensure the transfer of knowledge regarding building science and building envelopes.

The Commission urges the HPO to take the leadership role in designating the Building Envelope Specialist or Professional, and that consideration of the Building Envelope Professional training program be included as part of the requirements for this designation. Ultimately, it is suggested, only the provincially-determined Building Envelope Specialist will be a recognized designation.

> ***Recommendation #12: That a Provincial Advisory Council (PAC) be established, through the authority of the Homeowner Protection Office's Research and Education initiative, and with the assistance of representatives from the development industry, the Architectural Institute of British Columbia (AIBC), the Association of Professional Engineers and Geoscientist Institute of British Columbia (APEGBC), the City of Vancouver, representative from other municipalities, Canada Mortgage and Housing Corporation (CMHC) and the provincial government.***

The *Homeowner Protection Act* (Section 13) provides for the PAC. The Commission encourages the HPO to continue developing the sophistication of this group and expand consumer representation on the Committee. As well, there may be a tendency for the work of the Committee to be deflected into issues which address personal agendas, rather than industry-wide issues, regarding building science and technology transfer. The Commission encourages the PAC to be focused and action-oriented.

CMHC, in one of its letters to the Commission, stated that it had not yet been invited onto the PAC. If this is the case, steps should be taken to do so.

> ***Recommendation #13: That Part 5 of the BC building code, through the Provincial Advisory Council, be reviewed prior to release, and that the City of Vancouver revisit its by-law, particularly Part 5, to ensure consistency with the eventual Part 5 of the BC building code.***

Part 5 was reviewed prior to its adoption in the 1998 Building Code. Minor revisions were agreed to by the ministry, industry, and the NRC. However, consistency between Vancouver's Building Bylaw and the BC Building Code were not forthcoming since the Vancouver Building Bylaw is the responsibility of the City. The Commission recognizes that the development and adoption of the BC Building Code is a participatory process including industry and government. The Commission respects this process. The intent of this recommendation was to ensure a deliberate review of the content of Part 5, with respect to building envelope failure. As well, the Commission would hope that all issues regarding the leaky condo problem, whether Part 5 or Part 9, relating to appropriate Code modifications, would be vetted through a rigorous process.

The Commission realized during its first set of hearings, that a high level of industry misunderstanding exists regarding the BC Building Code and Code interpretation. As a result, the first report attempted to address these issues clearly and concisely. Given the level of discussion

regarding the role and purpose of the Code (and Code content) which ensued during the most recent set of hearings, this Commission has allocated a significant amount of attention to this issue. The Commission is aware that there is considerable discussion taking place within industry to address Code issues, and that the Provincial Advisory Council is taking a leadership role in this regard.

It should be recognized that the responsibility for Code changes rests with the Ministry of Municipal Affairs; whereas, the Building Policy Branch and the HPO reside in the Ministry of Social Development and Economic Security. This organizational situation could be problematic over time. Therefore, the Commission recommends an appropriate organizational structures to facilitate Code development in Chapter FIVE, Section II, Provincial Government.

III. Blame it on the Code

A. Background

When the Commission reconvened its focus was on assessing the economic and financial impact on homeowners of wide-spread building envelope failures. This further inquiry was precipitated by the failure of New Home Warranty (NHW) and the growing magnitude of the economic and financial problem on BC residents, since many financial support measures, as recommended in the first report, were not implemented.

Building code matters--although important--were of a lower priority, primarily because the Commission felt the issue had been adequately addressed in the first report. Our solution was to have the industry, through the HPO's PAC, address code issues, in a participatory and reasoned process, assisted by the reinstatement of the Building Standards Branch.

The Commission's first report concluded that a number of factors, including a failure of the building process; building science issues; overheated housing market; and a poorly-interpreted building code, led to a disintegration in the quality of residential construction in BC. This judgment received widespread endorsement from the building industry, architects, engineers, inspectors, and the general public.

> *In our previous submission to the first Barrett Commission, we stated that, in our view, the building code is a minimum standard for life safety for buildings. It is not intended to deal, in detail, with specific issues such as building durability. We stated that amendments to the building code are unlikely to give the required protection to consumers with respect to building envelopes and, for that reason, we do not support attempts to prescribe solutions in the code. Adequate building envelope performance requires careful attention to detail by skilled and knowledgeable persons at both the design and construction phases.*
>
> *- Doug Williams, Consulting Engineers of BC*
> *December 6, 1999*

I think [you] dealt quite adequately with the Code issues in the last Barrett report.

- Dave Ricketts, Engineer
October 7, 1999

It is my opinion that the Code made little or no contribution to the problem of leakage-prone condominium buildings. Adequate code requirements for enclosures of buildings were in place when the condominium buildings were constructed. Virtually all inadequate performances of the walls, windows, and roofs of buildings derive from improper design.

- Tom Morstead, Consultant, BC Building Envelope Council
October 11,1999

...there's been many factors brought before the Barrett Commission concerning the origins of the leaky-condo problem and, incidentally, I think you summarized them extremely well in your first report. I really liked that first report.

- Pierre Busque, Engineer, Presenter on Behalf of UDI
January 6, 2000

***Mr. Leask:** The question you answered was, is it a building code problem? And I can summarize your answer. No, its not. Right?*
***Mr. Watt:** Yes.*

- Douglas Watt, Building Envelope Specialist, City of Vancouver
November 16, 1999

The Commission did not anticipate that CHBA-BC and UDI, the industry's representatives, would employ a deliberate strategy of deflecting their role and responsibility by creating confusion around the Building Code. However, it appears that this was their strategy from the beginning.

The report on the Quality of Construction of Condominiums is to be released on June 19th [1998]. There is concern that no attention has been paid to the home builders. Technical issues have not been addressed. According to the Commission the current Building Code is fine.

Keith Sashaw reported that Jim Thomson and he had a good meeting with the Vancouver Sun Editorial Board at which they did a good job of articulating our position. This will serve as an opportunity to go on public record and state our case.

Keith noted that part of our strategy may include discrediting the Barrett Commission. Once the report is made public, CHBA-BC must develop a position to refuse to participate if we don't agree with the report.

- CHBA-BC Board Minutes
June 11, 1998

Documentation suggests CHBA-BC was in the habit of blaming the BC Building Code in situations where their members' performance could be drawn into question. Following the collapse of New Home Warranty, CHBA-BC--the sole shareholder--planned to deflect responsibility, according to minutes from the CHBA-BC Executive Committee meeting of April 1, 1999.

> *It was noted that it [the Liberal Caucus] should be made aware that although the government won't help out, they won't even consider other options, for example, the elimination of the Building Standards Branch could be blamed for the crisis [NHW's failure], as well as changes to the Code.*

The elimination of the Building Standards Branch, although regrettable, occurred in January 1997. All of NHW's major structural damage claims occurred on buildings constructed when the Building Standards Branch was in full operation. NHW's failure was discussed in Chapter TWO. NHW's agreements with builders required adherence to the Building Code. Never, in Board Minutes from 1976 - 1999, operations reports, education or training seminars, was the Building Code cited as being problematic. Finally, the Code that some in the industry have suggested is problematic, was adopted in December 1987, while many of the problem buildings were built using the 1982 BC Building Code. This Code, the same people suggest, is without problems.

Following the announcement of the reconvening of the Barrett Commission, the association appears to have implemented its earlier strategy. The Vancouver Chapter of the CHBA-BC released to the media Mr. James Currie's letters to the NRC and the provincial government, with statements endorsing the view that the Building Code was responsible for building envelope failures. This behaviour was reflected in the October 20, 1999 Minutes of CHBA-BC's Executive Committee.

> *Barrett Commission - This item is for consideration for the Association to declare the Commission as illegal. It was noted that the perception is extremely important, and further clarification will be required.*

The Urban Development Institute (UDI) represents over 400 corporate members which span the residential, commercial, industrial, and institutional real estate development sectors. Shortly after the release of Mr. Currie's letters by Peter Simpson of the Vancouver Chapter of CHBA-BC, UDI, on September 30, 1999, issued a public release stating that the refusal to act on Mr. Currie's warnings mirror UDI's experience. Maureen Enser, Executive Director, stated:

> *For years we have been warning a succession of ministers that the Building Code is not appropriate for BC's wet coastal climate and that serious problems could occur if it was not changed. We were repeatedly ignored. Mr. Currie's efforts to resolve the problem indicate these warnings were coming from within the bureaucracy as well, but that he too was ignored.*
>
> *We believe public confidence in government's ability to protect consumers has been further undermined by Mr. Currie's disclosure....The Commission's brief*

should be re-written to allow it to focus exclusively on government's role in this crisis.

On the same day, UDI President Olga Ilich, sent an open letter to about 1600 delegates to the Union of BC Municipalities in Vancouver, stating that the current Building Code is partly responsible for the leaky condo crisis. The letter stated that UDI believed the Code was the major cause of the problem and for years has been urging the provincial government to make it more appropriate to BC's climate. UDI's aim? A "Made-in-BC Code."

UDI appears to have adopted a public relations approach consistent with the CHBA-BC. However, on May 22, 1998, UDI made a major submission to the Barrett Commission, running over 85 pages. Of the many issues discussed, and recommendations made in UDI's submission, there was no specific reference to the BC Building Code being responsible, or partly responsible, for this crisis.

On November 1, 1999, Olga Ilich, Scott Cressey, Rick Genest, and Maureen Enser, on behalf of UDI, made a presentation to the Barrett Commission. They were asked about the "years of warning that the Building Code is not appropriate for BC's wet coastal climate."

> ***Ms. Allan:*** *So I'm asking, if that's how you still feel, I'd like to see the reports that would help us in our work to recommend the most appropriate go-forward situation. I would like to have those tabled with this Commission.*
> ***Ms. Enser:*** *We'll be doing a full written submission, and we will try to get all that information to you by the end of November, when we plan to have our written submission to you.*

The Commission greatly appreciated receiving the report tabled by UDI on February 17, 2000. Regrettably, there were no documents included in the submission which urged changes to the Code which could be attributed to a concern UDI held prior to October 1999. There was no information to substantiate the claim that UDI had been warning successive ministers for years *"that the Building Code is not appropriate for BC's wet climate."*

With respect to a call for a "Made-in-BC Code," BC and Vancouver have had their own codes for at least the period under review (1983 - 1999), and as the discussion of the follow-up to Mr. Currie's letters details, the process was participatory and very much able to meet the needs of our unique climate, had the participants wished to do so.

The Commission believes that there has been a deliberate attempt by CHBA-BC and UDI to create widespread misunderstanding about the role, purpose, and content of these codes. For builders and developers to point the finger at the Code and say they knew there would be problems, but were ignored, is both misleading and divisive.

The Commission has learned that UDI's approach to blame others is not a new strategy. UDI hired a public relations firm as explained in an article in BC Business, September 1999, *"to save the industry from certain devastation--a likely result of the Leaky Condo Disaster."* UDI's

public relations strategy set out to create fear around unionization and to discredit the Inquiry. The industry had concluded, before the Commission had started its work, that blame would be laid at the feet of the developers. *"James Hogan [the public relations consultant hired by UDI]...still seems a little surprised his clients weren't left holding the brolly."*

The Commission, in its first report, as in this one, confirms that this disaster is the result of many factors--the interpretation of the Building Code among them. It can only be described as a systemic failure; the building process failed as did the transfer of building science knowledge. Although the Commission raised concerns about the interpretation of the Code, and the lack of a general understanding within the industry of basic building science, there has been no discovery that the Building Code forced the construction of buildings which would fail. Design and detail, implementation and workmanship--these are the key areas of focus to find out what went wrong and why.

B. The Currie Letters

Shortly after the Commission reconvened public hearings in September 1999, it was learned through media reports that Mr. J.C. Currie, director of the BC Building Standards Branch until retiring in 1987, had written to the Provincial Minister of Municipal Affairs on December 12, 1991. His letter outlined his concerns *"over the direction taken by the National Building Code with respect to house construction."* He stated that he had *"written to Ottawa in 1987, outlining my feelings on the matter and a copy of that letter is attached; but there was no response."* On May 25, 1999, Mr. Currie wrote to the then Minister of Municipal Affairs, Jenny Kwan, referring to his past correspondence on the matter.

It should be noted that at no time was this correspondence, or the issues contained within the letter brought to the attention of the Commission during the first set of hearings. Given allegations that there was a "cover up" and that Mr. Currie's letters somehow provided the solution to the leaky condo crisis, the Commission undertook a comprehensive investigation, both in terms of the specifics of Mr. Currie's charges, and the process, if any, of follow-up to his comments.

The Commission contacted Mr. Currie and asked if he would make a presentation. Mr. Currie declined the invitation but agreed his letters would form the basis of his submission. He informed Commission staff that his letters had been made public as a result of copies being sent to Mr. Peter Simpson of the Greater Vancouver Home Builder's Association, a chapter of CHBA-BC. The Commission invited Mr. Simpson--who publicly endorsed Mr. Currie's letters--to come before the Commission and discuss his knowledge and understanding of the Code and building envelope failure. Mr. Simpson declined.

C. Investigation of Mr. Currie's Concerns

The Commission has found that each of Mr. Currie's letters were investigated and analyzed by industry building and regulatory authorities at the provincial and federal levels. Volume III - Documents, Part C, provides the detailed correspondence from both provincial and federal authorities on Building Code issues, as well as copies of Mr. Currie's correspondence. The details are summarized below.

As the first Currie letter of December 1, 1987 was addressed to Mr. J. F. Berndt, Deputy Chairman, National Research Council (NRC), the Commission requested a presentation from the NRC which would, among other important issues, comment on the Currie letter and explain follow-up proceedings. Ms. Adair Chown, Senior Technical Advisor, Canadian Code Centre, made a presentation to the Commission on January 13, 2000.

With respect to the letters addressed to former provincial Ministers of Municipal Affairs, the Commission requested copies of internal correspondence addressing Mr. Currie's concerns. The Commission also requested a presentation from the Building Policy Branch (formerly the Buildings Standards Branch), to ascertain steps taken in addressing the concerns both in 1987 and 1992. Mr. Bob Thompson, Acting Director, Building Policy Branch, made a presentation on November 25, 1999.

With respect to the validity of Mr. Currie's concerns, from the perspective of building science and building envelope failures in the coastal climate, the Commission also heard from engineers, architects, professional associations, and other practitioners, addressing each one of the concerns Mr. Currie raised in his letters.

D. Mr. Currie's Concerns

The essence of Mr. Currie's correspondence boils down to six concerns, including:

1. the culpability of the code and the bureaucracy;
2. permeance of materials in the air barrier system;
3. energy conservation;
4. moisture entrapment;
5. moisture content of lumber; and
6. ventilation.[31]

The Commission made extensive inquiry into each of these concerns.

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[31] Since the particular ventilation concerns raised do not have any relevance for building envelope failures, these are not addressed here. It should be noted that Mr. Currie's concerns regarding ventilation were accommodated in the 1985 BC Building Code.

1. **The Fault of the Code and Bureaucracy**

> *On the matter of responsibility it is my firm opinion that the blame lies with the Building Code....To complicate the situation we have the usual attitude of genuine bureaucracy, and Ottawa most certainly falls into this category.*
>
> *- J.C. Currie, May 25, 1999*

Mr. Currie's correspondence to the NRC was provided to the Standing Committee on Houses and Small Buildings (Part 9) for its consideration. This was reviewed at the Committee's thirty-fifth meeting, April 12 - 14, 1988. The minutes recorded that:

> *...some of Mr. Currie's concerns may be partially satisfied by the proposed revisions to [NBC Section] 9.26 and [Subsection] 9.33.3 and the accompanying appendix notes....It was further noted that a fairly leaky [breathable] house can still be built under existing NBC requirements so that the options suggested presently exist. It was therefore agreed that no action be taken.*

The 1991-1992 correspondence received by the NRC largely reiterated the concerns expressed by Mr. Currie in his 1987 letter. The letter was addressed to the then Minister of Municipal Affairs, Robin Blencoe. It was subsequently forwarded to the NRC by architect Jim Traynor of David N. Spearing & Associates. The correspondence was then forwarded to the Standing Committee on Houses and Small Buildings and reviewed at its forty-first meeting, November 16 - 17, 1992. After review and discussion, the Committee concluded that, without solid technical documentation, it could not respond to the opinions expressed in the letters.

It should be recognized that the NRC Standing Committees are responsible for various technical areas in the Codes and are drawn from all segments of the construction industry, including architects, engineers, manufacturers and product suppliers, building owners and developers, and building users. BC representation on the Part 9 Committee is extensive. From 1980 to the present, it has averaged 18 percent from British Columbia. During the review of Mr. Currie's correspondence in 1988, representation from BC included David Verge, CEO, New Home Warranty, and Terry Hale, MAIBC. In 1992, representation included Richard Stewart, Stewart Communications, Steve Gertsman, Building Technology and Code Consultant, and Terry Hale. Final decisions on the technical content of the Codes are made by these Committees, not NRC staff.

The Commission requested, and received, from the Ministry of Municipal Affairs, the Ministry's investigation of Mr. Currie's allegations in his letters of 1991 and 1999. It should be mentioned at this point that in 1985, while Mr. Currie was still Director of the Building Standards Branch, the Code Review Process in British Columbia became a participatory process, whereby a "Made-in-BC Code" was officially adopted.

> *...between '85 and ultimately '87, when the '85 National Code, with changes, was adopted in BC, a fairly elaborate public process was put into place...from the*

builder to the designer and everywhere in between, and it was advertised, through the industry, that we were soliciting, basically, proposals to modify the 1985 National Code for use in British Columbia. And my recollection is we received some 400-odd proposals from code users around the province, of suggested changes. Some of them were wacky, some of them were extremely good. The Branch itself promulgated some changes that went into the code; they were produced in house....We appointed a Code Review Committee, which was made up of a number of knowledgeable individuals from the industry...and the responsibility for that Committee was the Building Standards Branch....Forty-one individuals from the building industry were assembled, and appointed as a voting committee. The Branch--the Ministry--had basically agreed that whatever came out of that process would become the next edition of the code.

- Bob Thompson, Acting Director, Building Policy Branch
November 25, 1999

Therefore, Mr. Currie, as Director of the Policy Standards Branch, and in charge of the Code development process, had ample opportunity for his views to become known and adopted in the 1985 BC Building Code. In fact, one of Mr. Currie's main concerns in his letter to the NRC in 1987 was included in the BC Building Code before it was adopted in 1987.

Mr. Thompson: *Actually in '87, when he [Mr. Currie] wrote his letter to the national code people...that's the point where we went from just a vapour barrier to a sealed vapour barrier. I think his concerns there were, "We now have this sealed vapour barrier on the inside, which we know won't be perfect," and I'm sure he was also aware that this was trying to address the air movement issue. And we have another vapour barrier, not an air barrier, but another vapour barrier on the outside, and he was concerned that we were ratcheting up, if you like, to a point where we might have problems with the inside of that wall.*

Ms. Allan: *But the solution was to create enough of an air space?*

Mr. Thompson: *The solution was to make sure that the exterior membrane, or membranes, depending on how the building was built, would allow moisture to evaporate to the outside.*

Mr. Allan: *Which the BC Building Code had adopted?*

Mr. Thompson: *Yes.*

Ms. Allan: *So would it be fair to say that the letter, in 1987, wasn't about BC at all, it was a letter to the National Research Council saying, "We've got it right, the rest of the country might be getting it wrong?"*

Mr. Thompson: *I think, yeah, it's fair to say that, at that point, we weren't addressing a unique BC concern. We were addressing a general building science issue that we might be trapping moisture inside the wall from interior sources.*

Ms. Allan: *Which BC was avoiding because of this process of 41 participants from the industry...adopting a code that had addressed, "if you're going to tighten it up, you also do this adjustment"?*

Mr. Thompson: *Yes.*

Mr. Currie retired in 1988 with some of his concerns and opinions having been incorporated into the 1985 BC Building Code. The same Code Review Process existed for the 1992 BC Building Code.

> ***Mr. Thompson**: [Mr. Currie's subsequent letter] was undoubtedly brought about because he saw the new code, which he wasn't involved with, and still had a concern....Our feeling was that the code did adequately address it, because it had gone through the appropriate technical review....*
> ***Ms. Allan**: So the issues in the '92 and the subsequent letters, was there anything in those letters that was new information to you or the process?*
> ***Mr. Thompson**: No. It was a repeat of his concerns from before he retired.*
> ***Ms. Allan**: That had been addressed?*
> ***Mr. Thompson**: Yes.*

The Commission believes that Mr. Currie's many concerns have been adequately addressed through the appropriate process established to ensure that BC has not only the responsibility for its own Code, but also adequate opportunity to adjust it on the basis of industry knowledge and wisdom. If there is a problem with the 1985 and 1992 Codes, the fault would surely lie with the Code Advisory Committees, initially established by the Building Standards Branch under the direction of Mr. Currie. These were the people who voted on, and developed, the BC Building Code.[32]

The Commission also wonders how the 1985 BC Building Code could have led to the building envelope failures experienced in condominiums since the Code changes were not adopted until December 1987. Multi-family buildings employing this Code were not constructed until at least mid-1988 and even into 1989. The Homeowner Protection Office reports that, of the 244 buildings registered for loans, 21.3 percent were built prior to 1989; with 6 percent being built prior to 1984.

2. Permeance of Materials in the Air Barrier System

> *Provide a permeable air barrier...over the sheathing. This should be tightly fitted at all openings, to prevent wind penetration into the framing system.*
> *- J.C. Currie, December 1, 1987*

As stated in the NRC submission to the Commission, Mr. Currie's concern over the permeance of materials in the air barrier were understood as part of good building practice. The air barrier system is the assembly within the building envelope that provides a barrier to the flow of air and vapour transfer due to air leakage. It can be constructed in various places within the wall assembly. The role and purpose of the air barrier has been understood for

[32] There were four CHBA-BC representatives on the 1987 Code Advisory Committee. The representatives on the '92 Code Advisory Committee were Richard Stewart and Gary Grelish.

decades and has been included in the NBC since 1965.

...the Code assumes an understanding of good construction practice. The Code permits flexibility in the design of building envelope assemblies including the location of the airtight elements of the air barrier system. The vapour permeance of materials in the air barrier system is of concern only where these materials are installed toward the colder side of the assembly. The Code provides no requirements that would preclude installation of these materials on the warm side of the assembly. For clarification, this issue was addressed, in any case, in the 1990 NBC and additional explanatory information was included in the Appendix to the Code.

- Adaire Chown, Senior Technical Adviser, National Research Council
January 13, 2000

3. Energy Conservation

My concerns stem from what appears mainly to be a blind pursuit of energy conservation, to the complete exclusion of all else....

- J.C. Currie, December 12, 1991

The National Building Code does not address energy conservation. The BC Building Code, on the other hand, does have requirements specifying minimum thermal resistance values for insulation which were introduced--only for houses--in the 1992 Code.[33]

There is perhaps an unfortunate coincidence that the vapour barrier requirements were being upgraded to a sealed vapour barrier in the mid-80s. Some people seem to think that's in response to the energy crisis. In fact, no, it's simply a response to the code objective of protecting the wall assemblies from deterioration, and providing recognition that there was a more critical mechanism happening here, in the form of leaking air, that they had to address, and did so by bringing about the sealed vapour barrier or air barrier requirement, and then followed that up with a choice of how you go about doing that in a later code. But it had nothing to do with conserving energy.

- Bob Thompson, Acting Director, Building Standards Policy, Ministry of Social Development and Economic Security, November 25, 1999

Requirements for vapour barriers have been included in the code since its first edition in 1941. The evolution of the code, to also identify explicit requirements for air barrier systems, is not in response to energy concerns, but rather in recognition of building envelope failures. And these requirements reflect a better understanding by researchers and practitioners that air leakage is the more significant moisture transfer mechanism, and the first requirements that explicitly

[33] It is also interesting to note that the Commission has learned that R2000 single-family homes, whose basis is premised on energy conservation, have a history of superior building envelope performance as compared with traditional housing.

referred to air barrier systems were provided in the 1965 National Building Code, long before the energy crisis of the '70s.

- Adaire Chown, Senior Technical Adviser, National Research Council
January 13, 2000

The BC Building Code and Vancouver Bylaw do have some specifications that are linked to energy efficiency. However, these cannot be linked to building envelope failures in any way, as explained by Douglas Watt, Building Envelope Specialist, City of Vancouver, in his testimony of November 16, 1999.

Ms. Allan: *...what do the Building Code and the Energy Code have to do with each other?*
Mr. Watt: *In the City of Vancouver, we have linked our energy provisions into the Vancouver Building Bylaw....The National Model Energy Code, at the moment, is not used, it is not accepted in a lot of jurisdictions....*
Ms. Allan: *So the BC Building Code doesn't have the Energy Code incorporated into it in any way?*
Mr. Watt: *No.*
Ms. Allan: *So when we hear that the Energy Code and the tightening up of homes over the last 15 years caused these problems, what you're saying is that, indeed, in the BC Building Code, it's not linked?*
Mr. Watt: *The specifics of the model Energy Code are not linked into the Building Code, but there were some minor changes that may be argued were energy-related that were made in the National Building Code, which were then reflected in the BC Building Code, but they were minor in substance.*

There still seems to be a misconception that poly was introduced for energy conservation reasons and that it is mandatory. Poly was introduced in the early 1970s and, as was explained in the first Commission report, it is optional. The Commission was recently informed by Ms. Chown that in 1982, according to the Canadian Construction Material Centre, there were *"37 non-poly vapour barrier materials produced by 11 different manufacturers, and between 13 and 17 of those were type 1. They were materials that were kraft paper based with foil laminations with or without asphalt, asphalt-coated kraft, and foil-backed Gypsumboard."*

4. Moisture Entrapment

The real issue is moisture entrapment in sealed wall systems; in virtually all cases this would involve wood-frame construction....When moisture problems first surfaced, I was obviously interested, and while I did not inspect any of the sites, television coverage clearly showed the existence of rampant dry rot....However, I have no doubt whatsoever that the majority of failures are due to moisture from within the buildings, not leaks.

- J.C. Currie, May 25, 1999

There is no question that the leaky condo problem is due to water accumulation in wall assemblies. However, Mr. Currie's concerns were addressed to single-family homes, not multi-family complexes. The vast majority of building envelope failures are with multi-family homes. As well, construction problems do not involve only wood-frame buildings. The Commission is aware of an increasing problem with high-rise residential building envelope failure.

The reference by Mr. Currie to dry rot also seems to be in error. Richard Kadulski, architect, wrote to Minister Kwan regarding Currie's allegations on July 13, 1999 and stated: *"Forestry biologists say that most of the problems we see in BC is with wet rot. Dry rot is rarely seen here. There is a difference in the action of the two."* It should be recognized that Mr. Currie was referring to television coverage of leaky condos, not to what he himself had observed.

Although moisture moving into the walls from within the building could, theoretically, be a problem, it is not the problem which has given rise to the leaky condo crisis; research and experience clearly show it is rain. According to the Survey of Building Envelope Failures in the Coastal Climate of British Columbia sponsored by CMHC--the most in-depth research into the technical causes of multi-unit residential buildings to date, the primary source of water is wind-driven rain from outside the building.

> *Excessive moisture in Canadian housing is not unique to British Columbia, and can be due to such factors as improper ventilation, from inadequate maintenance or improper occupant practices, or result from a failure of the building envelope to prevent moisture entry or removal. In the case of BC condominiums, we determined from the 1996 survey that the reason for the water problems was due to a failure of the building envelope, and that almost all of the problems were associated with water entry from outside the building and not from diffusion of moisture from inside the home.*
>
> *- Jim Lynch, General Manager, CMHC*
> *November 3, 1999*

Other testimony on internal and external moisture was extensive and included the following:

> *...my concerns with his point of view on this are that, although he may have forecast a condo moisture problem, he really identified it based on the wrong issues. He was really--from a technical point of view, he was ascribing the problem to interior moisture, not exterior moisture, and, you know, that's fundamentally not what happened....You know, by his own admission, Mr. Currie never inspected a leaky condo, so I think that should cause us to suspect some of his conclusions regarding them. In his letter that I've read, he really demonstrates some fairly poor building science knowledge. He's got some real basics wrong in there. And I had difficulty because he didn't identify any specific*

aspects of the Code which are deficient. You know, it was just kind of a general thing: "This is interior moisture and the Code is not right." So I don't feel that people should be hanging their hat on this.

- Dave Ricketts, Engineer
October 7, 1999

...arguably, we repair more buildings than anybody else. In the vast majority, and I would say 99.9 percent of the cases, the moisture got in through rain water....

- Pierre Gallant, Engineer
November 1, 1999

5. Moisture Content of Lumber

The moisture content of lumber when installed is required by the Code to be 19% or less, a level classed as "dry" for grading purposes, but I question whether this is ever checked on a building site, and lumber is regularly "green" or even saturated when delivered....Framing could be enclosed long before reaching the 19% level.

- J.C. Currie, December 1, 1987

Mr. Currie quite correctly raises concerns over the moisture content of lumber. If climatic and industry conditions are such that a wood-frame wall must be finished before the moisture content can be reduced to 19 percent, all the relevant codes, over the relevant time periods, required an alternative construction method be used.[34] That is, a wall should never be installed if the lumber has greater than 19 percent moisture content. To expect the Code to be self-enforcing is unreasonable; enforcement is the responsibility of municipal inspectors.

The Commission is aware that Letters of Assurance must be signed by qualified architects and engineers. These letters indicate that the Building Code has been followed and the professional has carried out on-site inspections. These assurances include basic building knowledge such as, "wood should not be wet when the wall is enclosed."

The Commission received representation which recommended only pressure-treated wood be used in wood-frame construction. Although the merits of rot-resistant wood are clear, designating it as the only wood which can be utilized in construction, seems unnecessarily restrictive.

[34] See, for example section 9.3.2.5. Moisture Content of the 1985 BC Building Code: 1) Moisture content of lumber shall not be more than 19% at the time of installation.

IV. Other Building Code Issues

The Commission was presented with a number of issues related to the Building Code in both sets of hearings including the following topics:

1. Performance versus Prescriptive Code
2. Minimum Standards or Best Practices
3. Should Face Seal be Prohibited?
4. Repairs and the Code

Although the findings throughout our inquiry have resulted in the Commission developing opinions regarding the most appropriate stance on each of these issues, they should still be tabled with the Provincial Advisory Council of the HPO for discussion and closure. It is the industry which ultimately has to work--on a go-forward basis--with the decisions made on these issues. Since the importance of these issues is so acute, it is likely that sound and substantiated decisions will be forthcoming. For example, the Building Code has been a performance-based document with some prescriptive elements, particularly Part 9. If the industry wishes to shift that approach, then it should do so, and be prepared to work within the revised framework.

There has been discussion of removing Part 9 from the Building Code in order to form a separate Code for housing. This does not mean that Part 9 should have been excluded from the Building Code sooner. Rather, it could mean that the nature of residential construction has changed enough to warrant a clear delineation between small, relatively simple buildings, and larger, relatively complex ones. It could also mean there is full recognition that only professional architects, engineers, and technicians should deal with the performance-based Building Code. Whereas, less technically-trained or experienced practitioners could use a prescriptive Housing Code.

A shift in approach does not mean the previous approach was in error, or caused the current problem. If Part 9 were separated from the rest of the Building Code, details on the prescriptive content to be included in the Housing Code would still need to be discussed. All the issues around vapour and air barriers, vapour diffusion, and water ingress or egress, will still need to take place in order to develop a common understanding of the building science.

1. Performance versus Prescriptive Code

Whether the BC Building Code or Vancouver Building Bylaw should be performance-based or prescriptive underlies many discussions regarding the appropriateness of the Codes for our province. Many presenters have pointed out that, although there are prescriptive elements in Part 9, the underlying principle is that the Code should be a performance-based document.

> *It's the nature of the professional business that people will always have differing opinion on how things should be done. It doesn't mean*

they're inappropriate or they're wrong; there's just different opinions on how things should be done, and we do not believe that we should be writing specific prescriptive descriptions about how things should be built in the Building Code....There are appropriate places for that to happen--things like the Best Practices Guide being published by CMHC, there are other avenues, there are discussions happening at BERC, there are reviews of typical assemblies being tested right now in lab facilities out at Forintek to...review how some of those recent changes and innovations will work in the climate of this province.

- Douglas Watt, Building Envelope Specialist, City of Vancouver
November 16, 1999

Ms. Allan: *Towards the end, you mentioned that what you are recommending is a performance-based code, not a prescriptive code, I assume, and to that end, are you suggesting that the code, as it stands now, particularly Part 9, is too prescriptive?*
Mr. Busque: *I believe so. Short and sweet, yes.*
Ms. Allan: *So the recommendations that you're putting forward should be viewed from the point of view of developing a greater knowledge and awareness about what should be done, and that it's really up to the design professionals, the builders, people making the decisions to obtain that knowledge, that it's not the role of the code to provide that guide?*
Mr. Busque: *I'm in total agreement with that, that the code is not an education tool.*

- Pierre Busque, Engineer, Presenting on behalf of UDI
January 6, 2000

...the focus here [Part 9.27.2.1. Required Cladding] is on control of rain penetration at the cladding plane, and secondarily, the provision of flashings and sheathing membranes to redirect incidental moisture ingress...it's these performance requirements that state what must be achieved. They must be complied with, regardless of what other provisions apply in the code. Knowledge of acceptable construction is critical to compliance. The code doesn't tell designers or builders or manufacturers or regulators everything they need to know in order to achieve this end. The code acknowledges and relies upon the massive amount of information that's available on design and construction, and recognizes demonstrated acceptable performance. It does not attempt to serve as a design guide or to describe acceptable construction details.

- Adair Chown, Senior Technical Advisor, NRC
January 12, 2000

2. Minimum Standards or Best Practices.

Related to the discussion of a performance or prescriptive Code is the notion of whether the Building Code should provide minimum standards for life safety and health or be a best-practices manual.

Clearly, without going into the comments in great detail, the practical reality of a Code--a binding document in law--of becoming a best-practices guide would make a mockery of the professional architect's and engineer's role, and of residential building as a market-driven industry.

> *The Code is a minimum standard. It's not a best-practice guide, it does not replace sound engineering or architectural judgment. To rely solely on the Code is admitting one's own lack of knowledge. The Code is simply to guide minimum standards, primarily for life safety....We could start to be more prescriptive and say do everything in a certain fashion...[but] would you like to have medical journals to be prescriptive?...I think you have to set rules of the game, but you must not replace sound judgment, you must not replace human beings. The Building Code is there as a minimum guide, it works, it needs to be interpreted properly.*
>
> *- Pierre Gallant, Engineer*
> *November 1, 1999*

> *Just to give you a sense of how I see the Code fitting in, we have a Building Code and it lays out basic rules of the road, if you like. You know, you don't want water to get in, and you want to control vapour diffusion and air leakage and things like that, you want things to be durable, and so on. The Canadian Building Digest would represent one example of stuff that has existed out there for 30, 40, 50 years, giving fundamental guidance on how to manage moisture sources in buildings, and that would be sort of the second level. Here's your objectives. Here's the basic building science. CMHC has put out a whole host of publications talking more specifically about how you do that, with real assemblies and real details. And an architect or a designer would typically consider all of these things and come up with a specific building design that's appropriate....Relying on the Code as your only means of design is like trying to use the rules of the road for driving....You have to know a lot more to drive your car than simply the fact that you have to stop at a red light.*
>
> *- Dave Ricketts, Engineer*
> *October 7, 1999*

3. Should Face Seal Be Prohibited?

The prohibition of face-seal wall assemblies on multi-family construction is currently in place in the Vancouver Building Bylaw and by-laws adopted by New Westminster and Richmond (municipalities have the power to adopt by-laws to supplement the BC Building Code). The reason for such a drastic step is municipal concern over inappropriate design decisions. This is regrettable. Face-seal wall assemblies can and do work under certain environmental conditions. They are relatively inexpensive wall assembly systems and, ironically, protect against moisture from vapour diffusion and interior air flow.

Concerns regarding face-seal wall assemblies were brought to the attention of the Commission during its first and second hearings. It is very important to point out that the Building Code did not require face-seal wall assemblies at any time. Rather, they allowed their construction, if design professionals believed they could work. Part 5 of the Code very clearly states that water should not get into the building and, if it does, it should be able to get out. Part 9 also states very clearly that water should not get into the wall assembly.

Face seal is a design and detail issue. If industry professionals cannot be trusted to make appropriate design decisions for this region, then perhaps face seal, under any conditions, should be prohibited. This does not implicate the Code; this indicates the lack of industry knowledge about building envelope science and design features necessary in southern British Columbia's rainy climate. Everyone knows it rains here. Why pretend otherwise?

Non-traditional stucco methods (other than the traditional prescriptive method detailed in Section 9.28 - Stucco, BC Building Code), seem to be among the most common claddings to fail, particularly on buildings without overhangs and which are exposed to wind-driven rain. Any non-traditional stucco building, with envelope failure, is a Building Code violation. Non-traditional stucco, such as acrylic stucco, is not described in the Code which means its use falls under Section 2.5.1.2 - Evidence of Equivalent Performance, in both the National Building Code and the BC Building Code. Section 2.5.1.2. states:

> *1) Any person desirous of providing an equivalent to satisfy one or more of the requirements of this Code shall submit sufficient evidence to demonstrate that the proposed equivalent will provide the level of performance required by this Code.*

4. Repairs and the Code.

Appropriate repair methods are of critical concern. The debate over the role, purpose, and content of the Code raises questions regarding its use during the

repair of problem buildings. Just as the Commission understands it is technically possible to design and construct face-seal wall assemblies that function properly, it is also possible to design and construct rain-screen wall assemblies that do not perform well. The Commission was presented with examples of failed rain-screen wall assemblies. A poor design is just as susceptible to problems as a good design constructed poorly.

> *...we can say unequivocally that the knowledge exists to design and construct sound buildings. Qualified professionals can and do provide this expertise to projects every day. The pressure that led to this problems in the first instance continues to exist, in our judgment and, ironically, strata owners who are undertaking repairs to leaking buildings may be perpetuating some of the problems....The fundamental cause of the leaky condo problem was the industry's failure to appreciate the significance of proper design and construction of the building envelope. As a result, the industry generally failed to apply building science relating to the control of moisture to the design and construction of residential buildings.*
>
> *- Philip Sunderland, Association of Professional Engineers*
> *December 6, 1999*

As building repairs are conducted under the Code of the day--as opposed to the Code in place when the building was initially constructed--the Commission acknowledges that the cost of remediation may be higher in some municipalities because professionals cannot be trusted to make sound decisions regarding design.

Since the Code did not cause the premature building envelope failure, repairs to the condos can be undertaken in an effective manner. The Commission believes that it all comes back to appropriate interpretation, understanding of the building science, and quality on-site control. There continues to be a major need for education, training, and appropriate expertise at key points in the decision-making process. The Commission feels, however, that voluntary education is not occurring quickly enough to instill the ability necessary for sound building envelope design and construction, for both new and repair activity. Mandatory education, training, and examination must be implemented.

Part II - Volume II Recommendation #2: The Homeowner Protection Office, with the support of the Provincial Advisory Council, to provide the leadership for minimum mandatory education for multi-family residential design and construction. Such education to include the testing of architects, engineers, and registered builders, regarding the basics of building science and interpretation of the BC Building Code and Vancouver Building Bylaw.

Chapter FOUR

The Industry

I. Builder/Developers

> *The fundamental cause of the leaky-condominium problem was the industry's failure to appreciate the significance of proper design and construction of the building envelope. As a result, the industry generally failed to apply building science relating to the control of moisture to the design and construction of the residential buildings. That technology and knowledge exists, and existed then, to design and construct sound buildings, but we know that, when the generation of buildings that now leak were constructed, engineers with the requisite skill were not typically engaged to provide this expertise. We believe that one reason for this is that, due to the market pressures, developers and their design teams were focused on lowest initial cost and, therefore, did not have an interest in elements that might have been more costly initially but had the potential to reduce longer-term operating and maintenance costs. This has been the case for new construction and as we discuss below, unfortunately appears to becoming an issue of repairs of defective buildings.*
>
> *- Philip Sunderland and Doug Williams, APEGBC and CEBC*
> *December 6, 1999*

The first Commission's report concluded that there was a systemic breakdown in the residential construction industry, a catastrophic disaster resulting in serious harm to the health, safety and welfare of thousands of British Columbians. The consequences are both devastating and pervasive. Premature building envelope failure and the lack of quality in design and detail has led to a burden, not only on the unfortunate homeowner, but ultimately on all BC residents. The Commission's first report did not single out one particular cause for this systemic failure. The failure was due to a number of reasons inherent in the building process and application of the building science.

A. The Building Process

Issues in the building process contributing to the failure were:

i) *an inability on the part of municipalities to effectively monitor building quality; to make certain inspectors play a meaningful role in ensuring building standards; or to enforce building codes;*
ii) *a lack of provincial monitoring to ensure accurate interpretation of the building code, as well as its performance requirements;*
iii) *a lack of developer, builder, and general contractor responsibility--often*

facilitated through protective corporate structures;

iv) *architects who have been unable to maintain professional responsibility in translating designs into quality physical structures;*

v) *engineers who have been unable to ensure their involvement in the process will lead to quality construction of the building envelope;*

vi) *a lack of training, skills, and qualifications that have led to a deterioration in the quality of worker performance;*

vii) *an inadequate home warranty program which, in the majority of cases, is faced with a conflict of interest between its service to the homeowner and its obligation to the developer;*

viii) *a mortgage guarantee system which tends to serve the interests of the residential construction industry and financial institutions, without due regard to the consumer, who buys its services;*

ix) *a lack of information from the builder to the strata council; and*

x) *a lack of understanding regarding roles and responsibilities of strata councils and management companies, leaving the homeowner confused and alone.*

B. Building Science

Issues in building science contributing to the failure were:

i) *a poorly interpreted building code;*

ii) *municipal by-laws that can lead to inappropriate design, exacerbated by architects, who do not understand the implications of their designs;*

iii) *the use of new materials without an understanding of how they will be affected by our climate;*

iv) *a loss of collective memory, and lack of conventional wisdom, among inspectors, architects, engineers, developers, and contractors regarding the requirements for effective building; and*

v) *ineffective communication and transfer of knowledge among the professionals and business people (who understand the issues), to others involved in the building process.*

The first report, tabled on June 16, 1998, included a detailed review of the residential housing industry and made 82 recommendations to ensure that poor-quality housing would never be constructed again, and that the problems already created would be addressed through quality repairs and financial support for people who had, or were going to, suffer financially.

Builders--both individually and through their associations (CHBA-BC, UDI, and BC Construction Association) acknowledged the absence of performance standards and the lack of qualifications for builders, contractors, and subcontractors. Mandatory builder licensing and regulation, to establish a level playing field, was strongly advocated.

About 1,400 residential builders are currently licensed in accordance with the HPO legislation.

All registered builders must qualify with a FICOM-approved warranty provider as a pre-condition of registration. The minimum, mandatory warranty coverage on all residential construction in BC must include 2 years on labour and materials, 5 years on the building envelope including water penetration, and 10 years on structure.

There are many builders who have built homes throughout this province, and built them well--particularly, single-family homes, duplexes, and townhomes. There are multi-family homebuilders whose structures have performed well or, when problems have arisen, have fixed them. Then there are a number of builders who put up multi-family homes and did it poorly. They made poor design choices; poor materials choices; bad hiring decisions; or they became more concerned about cutting costs and corners, than building homes that would last a generation or more. Some of these builders are no longer operating within the province; others are changing their building practices.

The quality of new construction is one area which is clearly being addressed. The Commission recognizes now, as it did in its first report, that licensing and regulation of building envelope repairs, is of critical importance.

> ***Recommendation #23: That all renovation contractors performing building envelope reconstruction greater than $2,000 per unit or $10,000 for single-family and duplexes, be licensed and regulated by the Homeowner Protection Office.***

Recommendation #22 is incorporated in the *HPO Act*, Section 14, while Recommendation #23 is incorporated in the *HPO Act*, Section 18. The regulation and warranty of building envelope repairs has not yet been brought into force. However, the HPO has been working with industry on a proposal to be effective in the Spring of 2000. There is room for concern about the adequacy of the proposed repair warranty and the response of the private sector warranty providers.

II. Professionals

> ***Mr. Leask:*** *If a hypothetical consumer has proper architectural advice in the last six weeks of the year 1999, can he or she purchase a newly constructed building, or unit in one, with confidence?*
> ***Mr. Neale:*** *Absolutely, absolutely.*
>
> *- Derek Neale, AIBC*
> *November 17, 1999*

During the first Commission hearings in 1998, testimony was received from Mr. John Davidson, representing the Architectural Institute of BC (AIBC).

> *We are perplexed as problem solvers by the multiple causes and the variety of combinations of those causes from building to building. We are frustrated that*

after more than three years of effort, we do not have a complete and satisfactory answer to the cause, nor full agreement on the best repair strategy.

The area of building envelope has traditionally been the responsibility of Architects. However, there is much specialized expertise in the engineering field. The Association of Professional Engineers and Geoscientists (APEGBC) is given the authority to regulate the practices of professional engineers and geoscientists, under the *Engineers and Geoscientists Act.*

In general, there are inter-recognition agreements between the AIBC and APEGBC on defining where these professional services are required. Both associations should be encouraged to allocate more resources on programs for technical review concerning building envelope detail for their members.

In addition, the Commission supports the involvement of other technical groups and associations such as the Applied Science Technologists and Technicians of British Columbia (ASTTBC). Such groups have been working with both Architect and Engineer Associations on guidelines for the role of ASTTBC members in the design and field review of Part 9 buildings and the minimum level of professional design on all new housing.

Recommendation #14: That training provided through educational institutions, and continuing education, offered by professional associations, clearly identify the special requirements for multi-family building envelopes in British Columbia.

The Commission appreciates the fact that AIBC and APEGBC have developed the Building Envelope Education Program (BEEP) for training professionals in the field of envelope performance. This program should be open to anyone in the field with an interest in understanding the building science issues, and the program should expand its on-site component. The Commission is unaware that building envelope issues have been included in the curriculum of more formalized educational institutions.

Further education, in undergraduate and graduate programs at the university level, is necessary. A proposal has been developed to create a Chair in Building Science and Enclosure Design at the University of British Columbia. This is to be created among the School of Architecture, the Department of Civil Engineering, and the Department of Wood Science. The Commission believes this proposal should be seriously studied by the PAC of HPO, considering the competing demands for research and education in this area. The Commission's recommendation for a contribution from financial institutions would generate adequate resources for such a proposal.

Recommendation #15: Any architect or engineer involved in Letters of Assurance and the field review process must have the qualifications, or sub-contract, the building envelope design and review to a qualified Building Envelope Specialist, to be defined by AIBC and APEGBC in consultation with the Provincial Advisory Council.

The Commission supports the good work undertaken by both AIBC and APEGBC defining a qualified Building Envelope Professional (BEP). However, it is important that the authority for this area rest with the HPO, assisted by the PAC. In light of the need for clarification, this recommendation is re-worded as follows:

> ***Recommendation #15 (revised): Any architect or engineer involved in Letters of Assurance and the field review process (for new construction or repairs) must have the qualifications, or sub-contract the building envelope design and review to a qualified Building Envelope Specialist, to be defined by HPO, in consultation with AIBC and APEGBC.***

> ***Recommendation #16: That the AIBC and APEGBC, revise current letters of assurance and field review process to include a more detailed checklist of building envelope components and submit to the Provincial Advisory Council for endorsation.***

The Commission understands that Letters of Assurance were amended and strengthened in the 1998 BC Building Code. However, further strengthening of the Letters of Assurance could be accomplished by identifying the building envelope as a separate discipline, similar to the way structural, mechanical, or other disciplines are referenced.

> ***Recommendation #25: That the AIBC impress upon its members the need for fulfilling their long-standing obligation to the public through an active identification of the issues involved, and a full-scale approach to improving Architect's standards of practice.***

Mr. Davidson, AIBC, in his presentation on November 17, 1999 stated:

> *Recommendation 25 was really advice to the Institute from the Commission to reinforce with our members the importance of providing appropriate and complete professional services to our clients and keeping in mind the obligation we have to the public in all that we do. Immediately after the release of the Commission report and our appearance last year, we issued several bulletins to our members, emphasizing the importance of exactly those things, the provision of only full services, to not diminish the provision of professional services, to use standard forms of agreement which lay out very clearly the requirements for those services, and also to reveal the insurance status of the architect to the client before commencing the work.*

> ***Recommendation #26: That the requirement for appropriate professional services on residential buildings, as constituted in the Architect's Act, be enforced.***

The Commission is not aware of any action taken by AIBC to ensure that the *Architect's Act* is enforced pertaining to the requirement that all buildings, 5 units or greater, have a qualified

architect involved in the design process. The reason for the Commission's recommendation in this regard was that the Commission heard testimony that unqualified designers were involved in designing multi-family construction (which could lead to an inappropriate reliance on Part 9). Enforcement of the Act would solve this problem.

> ***Recommendation #32: That the APEGBC and AIBC, along with other members of the Advisory Council to the Homeowner Protection Office develop a strategy for identifying building envelopes at risk, develop a set of sound practices for remediation, and distribute the information for use by the industry, strata councils, and homeowners.***

The Commission is not aware of steps to implement the above recommendation in a meaningful way. The Commission is aware that the HPO is involved with the Building Envelope Research Council's work on remediation and that this will be integrated into information sessions with Stratas. However, the proposed Compensation Plan requires, more than ever, that the above recommendation be fully and appropriately implemented.

Prior to the first Barrett Commission of Inquiry, CMHC was instrumental in founding a consortium called the Building Envelope Research Council (BERC), and has worked actively with the housing industry, financial institutions, government agencies, and others to find solutions to the moisture problem in residential housing in BC. CMHC is an important partner in the Research and Education function of HPO and should be included as part of the education and research strategy.

> ***Recommendation #33: That the APEGBC work to establish recognition of Building Envelope Science as an important technical discipline and encourage members who practice in residential construction to upgrade their abilities accordingly.***

The Commission is aware that this recommendation is being implemented through the accreditation standards being developed as part of BEP.

> ***Recommendation #27: That the AIBC increase its efforts to work with APEGBC and other industry representatives to develop a common understanding and an agreed to strategy for ensuring quality building envelop design and review of construction through the Homeowner Protection Office's Research and Education initiative.***
>
> ***Recommendation #28: That standard forms of contract become compulsory between the architect and developer in multi-residential design.***
>
> ***Recommendation #29: General contractors or builders improve their communication with architects (or coordinating engineers) and the city inspectors, by informing each party as to the stage of construction.***
> ***Recommendation #30: Architects (and coordinating engineers) should be***

encouraged to use third-party inspection services and manufacturers' inspection services to augment their field reviews.

The Commission had envisioned Recommendations #27 - #30 would be fulfilled through the AIBC involvement with the HPO and the PAC. Unfortunately, the Memorandum of Understanding (MOU) between HPO and AIBC took many months to finalize and much valuable time and energy was spent focused on the MOU, instead of the content of these recommendations.

The Commission, although encouraged by the level of knowledge and understanding of the issues reflected in the presentation by the AIBC at the most recent hearings, is still concerned that architects and their regulatory body are not yet acknowledging their responsibility for the crisis nor working with sufficient vigour toward solution.

Recommendation #31: Homeowner Protection Act be structured to receive, as part of the funding for the proposed Education and Research function of the Homeowner Protection Office, an annual fee from each AIBC member of $1,000.

This recommendation was not implemented. Instead, the architects agreed to provide $250 per AIBC member to the HPO. This shortfall in funds helped to weaken the PAC and delay the work it should be doing.

The AIBC informed the Commission that their members were under pressure from developers to produce substandard work because fees were not high enough. The Commission understands the pressure builders bring to bear on all facets of the development process, including pressure on architects, however, AIBC needs to contribute a fair share to the solution.

On February 2, 2000, ENCON Insurance Managers, which provides professional liability insurance for about 70 percent of the architects and engineers in British Columbia, announced that *"effective February 1, 2000 ENCON have introduced policy amendments which will exclude coverage for claims arising out of the infiltration of precipitation on all multi-unit residential projects."*

Effectively, ENCON will no longer provide liability insurance in the event of a leaky condo. Professionals remain covered for the duration of an existing policy--1-2 years--but upon renewal, water penetration coverage is no longer available. Since the policies are provided on a claims-made basis, the change means that strata councils should take immediate steps to make claims against any insured architects or engineers.

ENCON's reasons for this change in coverage options were outlined in correspondence as follows:

The problem is not new, we have all been aware of it for several years, however in the last 12 months the magnitude of losses and potential losses has (sic) increased greatly. Eighteen months ago we had 69 Leaky Condo claims reported over 5 years and today we are facing over 200 such loss situations and the number is growing as each week passes.

III. Labour Force

I'm involved daily in inspections, I see daily what's going on in the market....Fish scaling, that's one of the old methods, and the true method, really to shut off water from a building. But it seems to me like in new construction, with the new materials we have on the market, that people think we don't have to do that anymore.

- Uwe Naumann, Building Inspector
October 4, 1999

An important element in the plan for the renewal of trust in residential construction is ensuring that qualified trades people are employed in the industry. Based on many submissions received by the Commission at its hearings in 1998, it became apparent that poor worker performance (including carpentry, roofing, glazing, and plastering) was a significant factor in building envelope failure.

Pride in producing safe, quality housing has given way, much too often, to the hiring of unskilled labour; cut throat competition, and underground cash economy; and too many occurrences of unreported, unethical practices. This situation is not the fault of workers; rather it is the developer or builder who is responsible for the skills of the people on the site. The effect of pressured work schedules, lack of regard for skills and training, and a desire to keep wages low, has led to a downgrading of the calibre of work. This situation reflects badly on the entire industry.

- Barrett Commission Report, June 16, 1998

Business, professional, and labour organizations expressed concern with this trend. All have supported a level playing field whereby housing construction operators--who play by the rules--are not placed at a competitive disadvantage, and tradespeople are not pressured into accepting less than adequate working arrangements and conditions. Furthermore, as noted in the first report, *"a declining skill base and deteriorating work habits are not a function of union versus non-union...training, qualification and certification does not require membership in a union."*

"Apprenticeship: A Construction Industry Perspective," (April 1997) was published by a task force, composed of employers in all facets of the construction industry, who strongly endorsed the position that *"compulsory certification of trades must be supported with appropriate compliance enforcement measures."* The Construction Industry Review Panel reported in 1998 that *"those contractors who presently abide by the rules are at a serious economic disadvantage when they*

have to compete with other employers who show a blatant disregard for this requirement."

The Commission, in its first report, made a number of recommendations related to subcontractor licensing, trades certification, apprenticeship training, and qualified trades enforcement on residential construction sites.

Regretfully, very little action has taken place. Evidence presented at the recent hearings, from strata councils, condo owners, municipal representatives, and labour organizations, indicates a continuation of poor trades practices. This is documented in the first Commission report. There is a deep concern that these same-poor quality construction practices are being repeated in the numerous repair and remediation activities associated with premature building envelope failures.

> *Having seen some of the players that are now involved in renovation work, coming onto a number of sites throughout the lower mainland, they employ the same level of lack of skilled workers that were originally on site. I think its reprehensible to see some of the development companies trying to...put the same people that are on site to correct the problems that...perhaps some of those workers contributed to directly in the first instance. They too should be covered by...regulations to ensure that they're trade qualified in order to do the work, whether its renovation work or whether its new construction.*
>
> *- Tom Sigurdson, Executive Director, BC & Yukon Building and Construction Trades Council*
> *December 2, 1999*

A. Enforcement of Qualified Trades

> *Architects, engineers, technicians, and inspectors must be registered and accredited. Why in the world are we not forcing contractors to use qualified trades persons? How does this contribute to the integrity of the safety systems and the public interest?*
>
> *- Wayne Peppard, United Association, Plumbing and Pipefitting*
> *October 14, 1999*

The Industry Training and Apprenticeship Act Regulations, Section 2, lists seven designated compulsory construction trades including electricians, plumbers, refrigeration mechanics, roofers[35], sheet metal workers, sprinkler system installers, and steamfitters-pipefitters.

A number of presenters informed the Commission about a lack of provincial and municipal enforcement procedures to ensure that, at least for the seven designated compulsory trades, certified workers were on site. This confirms what the Commission was told during the first set of hearings.

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[35] Roofers, as a compulsory trade, currently excludes those involved only in residential construction.

...today, we could go to any job site around the block here and find unqualified workers installing piping, work that should be done by qualified people, that is under the legislation right now.

- Steve Oakley, United Association, Plumbing and Pipefitting
October 14, 1999

I will list off a few of the locations where construction is now underway, completed....This is just a small sample of all these sites...where they are using, currently, or have used, unqualified electricians and an excess of untrained, unskilled and unsupervised apprentices.

- Dave Thompson, International Brotherhood of Electrical Workers
October 14, 1999

The Commission had recommended (#4, #34, and #37) that a system of inspection be designed whereby municipal inspectors and provincial inspectors under the HPO, enforce the employment of qualified building trades on site. A system of discipline was also recommended for employers who violate the requirement for qualified trades on residential construction sites.

Recommendation #4: That the administration and interpretation of the Building Code be enhanced through the creation of provincial inspectors capable of undertaking on-site inspections.

Recommendation #34: Immediate and definite steps be taken to ensure that all compulsory trades required by law to be on site in a residential project, be enforced.

Recommendation #37: That a system of inspection be designed whereby municipal inspectors and provincial inspectors, through the newly formed Homeowner Protection Office, enforce the employment of qualified building trades on site, and that a system of discipline be developed for employers violating the requirements for qualified trades on residential construction sites.

Section 19 of the *HPO Act*, provides HPO with the authority to ensure only qualified workers are on site. Section 9 provides the authority to enforce the requirement for on-site qualified workers. Section 34 authorizes the application of penalties for lack of compliance. The Commission had envisioned that a special team of inspectors within the HPO would perform a number of important functions including, but not limited to:

1. checking for certification of workers on site;
2. spot checking compliance with the Building Code (although compliance is a municipal responsibility, the Commission was very concerned about the lack of municipal inspections and lack of on-site discipline to ensure code compliance);
3. ensuring owner-builder status is legitimate; and
4. providing an information feedback loop to the HPO on standards of practice and performance.

The enforcement of qualified building trades on site could be undertaken by municipal inspectors. However, for a variety of reasons, spelled out in Chapter FIVE, Municipal Government, this is not likely to happen. The HPO needs to take the leadership role in inspection, enforcement, and discipline.

Until recently, no action on trade enforcement had been taken by the HPO. However, on January 20, 2000, a senior compliance officer was added to HPO's staff complement to ensure qualified trades are employed in the building process through on-site inspections. The Commission believes that enforcement should be a much higher priority among HPO activities and that this recent hiring should be a first step toward a small team of inspection and random auditing to change the current environment.

> ***Recommendation #36: That any developer, builder, general contractor, or sub-trade, who employ compulsory trades to work on a residential construction site, must file a report listing the names and trade qualifications of all certified and apprentice trades on the job, and that this list form part of the necessary documentation to be provided to future strata councils and homeowners.***

This Recommendation was put forward to assist in ensuring only qualified workers are on site as required by law, and that homeowners know who to contact in the event of a problem with their building . Employers under the *Homeowner Protection Act*, Section 19, and the Regulation 4 (i), have an obligation to employ in accordance with *The Industry Training and Apprenticeship Act* and, therefore, must employ only people who are qualified in particular trades, to work in those trades. However, this recommendation has yet to be accommodated in the regulations. The Commission is of the view that this recommendation be implemented and the list be filed with HPO.

B. Trades Designation

Automotive service technicians, automotive painters, and hair stylists are a number of the compulsory trade designations in British Columbia. As stated in the first Barrett Commission report, the skills related to those areas of expertise are appreciated.

> *What this Commission does not accept is that the trade skills in constructing a home--which is the most important investment decision most people ever make--are somehow less important than the mandatory skills related to auto repair and hair styling.*
>
> *- Barrett Commission Report, June 1998*

There are numerous recognized trades required for home building--especially the carpentry trade--which have provided the majority of foremen and site superintendents in residential construction. Among the larger, more populated provinces, British Columbia's designations are less than the compulsory designations in the provinces of Quebec, Alberta, and Ontario.

iii) the names of each principal, partner, director, and officer of the applicant; and

iv) the nature of the work to be performed as part of the construction of a new home.

It is recognized that detailed regulations have been formulated to provide guidance for warranty providers in obtaining the proper information to assess the risks and related costs involved in warranty coverage required on residential construction. However, warranty coverage is neither a substitute nor a protective umbrella for ensuring that qualified work is undertaken.

Warranty companies have neither the authority, skills, nor resources to guarantee qualified work takes place. They do not regulate sub contractors involved in residential construction and they are not in a position to ensure qualified trades undertake the work they are supposed to undertake; just as building inspectors are not in a position to guarantee the quality of work on site. Given the mandatory warranty standards now being required, the continuation of poor quality residential construction by unregulated sub contractors will result, later on, in high renovation costs and higher premiums imposed by warranty companies.

The regulation of sub contractors is an important element in ensuring a level playing field for the industry. It also provides a minimum standard of performance which will assist all developers and general contractors by providing the certainty that poor quality work, often at reduced prices, is not being undertaken and, thereby, undermining the ability of integrious companies to compete in the market place.

D. Worker Training

Developing the necessary skills and abilities of those involved in the residential construction industry is the central theme of the Commission's work. Education, training, technology transfer, due care and attention, understanding the building science, understanding on-site techniques, understanding the building code--these are requirements that appear time and time again. This industry has paid the price of ignorance.

> *...it appears that maintaining high standard of quality and passing the necessary skills and work habits onto the next generation has become a relic of the past. The commitment to train young people in trades, as part of an apprenticeship-based method, has given way to developers and builders, using apprentices as cheap labour. There is little intention of ensuring the training is completed and journeyperson status is achieved.*
>
> *-Barrett Commission Report, June 1998, page 40.*

At the recent hearings the Commission heard testimony related to the hiring of non-registered apprentices whose wage rates are significantly lower than a journeypersons wage rates and which represent lower costs to any unscrupulous contractor.

Ideally there should be 3 or 4 journeypeople to each apprentice. This is because journeypersons have specialized expertise in one area of the trade over another. Allowing an apprentice to resource the experience and specialized expertise of a number of journeypeople gives the apprentice a more rounded training experience.

- Tom Sigurdson, Executive Director, BC & Yukon Building and Construction Trades Council
December 2, 1999

The Commission recommends that the provincial government through the Industry Trade Apprenticeship Commission (ITAC) tighten up on apprenticeship ratios to offer the best training possible to residential construction workers. Related to this area is the requirement for a proper and effective trades training system.

We still install residential window systems, but not on the scale that we used to....We used to have several contractors who installed residential window systems. Everyone of them employed TQ journeypersons and registered apprentices. The tradesmen installing the windows had learned the proper procedures involved in their craft over the years, and passed their knowledge onto the young people apprenticing under them. The end result was a quality leak-free installation, and an apprentice gaining experience and knowledge.

We now have only one contractor who specializes in the high-rise residential new construction market....[They] can now no longer compete with the large eastern contractors who have come to town, or the local fly-by-nighters. They hire the bulk of their crews through labour brokers, such as Labour Ready, or right off the street with little or no experience in glazing. The turnover in the crews is a constant problem.

- Pat Byrne, Glaziers Union
December 2, 1999

The above is particularly disturbing given the fact that the Commission has heard numerous presenters point to the problems with windows and window installation as a major contributor to the leaky condo problem.

The unfortunate reality we've observed in the last number of years out in the construction industry is that, as skilled professionals retire, there is not really an influx of new members who have significant training following them into the construction industry....There was a group of Portuguese cement finishers (who worked on the new library downtown) who, frankly, have been around town for a long time, are some of the best cement finishers in town, doing the work on that project. My fear is, when they retire, we won't have the same skill of concrete finishing available in the city of Vancouver. Frankly, we've had waves of immigration that brought in significant skills and trades into the province, and our training programs, I don't think, have done service for us in providing those

Since, in many cases, the actions of CMHC mandated our choice as owners, they have created a liability to which they have not responded.

- Brent White, Strata Corporation Chair, Michael Vizsoli, Vice-Chair
Beverly Gardens, LMS 2332
September 21, 1999

In the Commission's first report, it was noted that CMHC had played a very important consumer protection role in enforcing quality housing construction in the 1960s and 1970s. By the early 1980s, that had changed. CMHC's primary role became that of a mortgage insurer for residential ownership. The beneficiary of CMHC's high-ratio mortgages were homeowners, as well as financial institutions. In return for a premium from the homebuyer, CMHC agreed to protect the bank, credit union, trust company, or other qualified financial institution against borrower default. These financial institutions could then provide mortgages to people purchasing homes with no more than a 5 percent down payment--compared to the 25 percent down payment required by law. For BC this expanded the multi-unit residential market, particularly for young families starting out, or for senior citizens on fixed pensions.

Certain areas of our business operate on a more commercial basis, most notably our mortgage insurance business. However, even within this area of our business, there are public policy considerations as we are mandated by the federal government to provide mortgage insurance to all Canadians at the same rates across Canada. CMHC sets its fees and premiums and pools its risk on a national basis to ensure that each of its mortgage insurance products are viable and that the Mortgage Insurance Fund (MIF) is self-sustaining.

- Jim Lynch, General Manager in British Columbia, CMHC
November 3, 1999

CMHC's public interest role has been seriously eroded as its commercial activities have been advanced--especially in the area of consumer protection. There is no question that CMHC has played a leading role in identifying the causes and finding solutions to moisture damage in condominiums in the coastal climate of BC. Its studies and technical papers, developed in response to moisture penetration, are well appreciated. Some of the research includes:

The Survey of Building Envelope Failures in the Coastal Climate of British Columbia: 1996
Best Practices Guide: Wood Frame Envelopes in the Coastal Climate of British Columbia: 1998
Managing Major Repairs: A Condominium Owners Manual (with HPO and Ministry of Municipal Affairs): 1999

However, it is suggested that CMHC has failed--either through a lack of corporate governance or benign neglect--to be a stronger advocate for homebuyers in the coastal climate of British Columbia.

The response from both the federal government and CMHC on recommendation #75 and #76, regarding the use of RRSP funds for repairs, was silence. However, as explained above, CMHC and Revenue Canada already had in place RRSP self-directed mortgages with CMHC insurance, allowing homeowners to borrow their own RRSP funds for home repairs.

In fact, after the Commission was reconvened in 1999, this matter was brought to the attention of CMHC by Commission staff. Vague responses were initially received about uncertainty as to whether leaky condo repairs would qualify. After considerable research and further inquiries by the Commission, it was determined that any BC homeowner could have borrowed funds from their RRSP for purposes of home repairs, without affecting their non-taxable status, as long as the mortgage was insured by CMHC.

However, after a number of visits by Commission staff to local chartered banks and credit unions, it was discovered that financial institutions' staff did not know about this option or, if they did, the product (a self-administered RRSP mortgage used for the purpose of home repairs, with CMHC insurance) was being actively discouraged under the claim that the fees and appraisal costs (about $1,000) rendered this option non-competitive. Obviously, when a homeowner is facing a $30,000 assessment, which must be paid out of after-tax dollars as compared to accessing their pre-tax RRSP funds, which they can pay back to themselves at market rates of interest, the cost-benefit is apparent. At no time did the federal government, CMHC, or financial institutions consider it desirable to make this information known or easily accessible.

Because homeowners were unaware of this program, a number exhausted their existing RRSP funds and paid income taxes accordingly, violating the Commission's principle that government should not be seen to benefit from the affects of this tragedy. When Mr. Jim Lynch, CMHC General Manager for BC and the Yukon, testified before the Commission on November 3, 1999, the following exchange took place during the question period:

> ***Ms. Allan:*** *But this other product has existed for some time, and certainly within the last year. Was there any reason why CMHC didn't feel that it would be helpful to condominium owners to advertise this product. Because the banks certainly aren't doing it.*
> ***Mr. Lynch:*** *No*
> ***Ms. Allan:*** *No regulations, no laws have to change, and we know of many homeowners who have liquidated their RRSPs, paid very high taxes to the federal and provincial government , and now have no retirement savings, and they could have had a self-directed mortgage.*
> ***Mr. Lynch:*** *Well, the information on the program is available —*
> ***Ms. Allan:*** *Where?*
> ***Mr. Lynch:*** *You're suggesting that it should be promoted more. I'll take that advice. The — I guess the judgment, and it could have been incorrect, that there would not be a large take-up of individuals who are in the circumstance of having large RRSP accounts that in fact would want to see it in a self-directed RRSP. They'd like to see their money doing better work for them in other investment vehicles.*

Ms. Allan: *Let's just look at the numbers, okay?, and I can understand if the marketplace take-up was low, but there weren't these kinds of repairs needed before. The environment is different. But let's just take an analysis. If I have a $20,000 special assessment, and I have to go to my bank and get a personal loan at 9 per cent, and pay for that out of after-tax dollars, that's one thing. That's a certain cost. But most of the people that are looking at liquidating their RRSPs have exhausted those avenues. So we're facing a situation where a consumer may only have an RRSP for $30,000, and not knowing about this product, liquidated $20,000, paid a 50 per cent tax rate on it, and now has no opportunity to put that money back into their retirement savings. There's a serious situation of a very different market environment for all these homeowners, and if even 20 per cent of them are faced with this opportunity, wouldn't it be incumbent upon the banks, and in fact CMHC, to help identify this for consumers? Because if you're working with your mortgage-insured consumers on trying to provide the best extension of their loans, and you're looking at market rate, why wouldn't that other opportunity also be provided to them, as a way to avoid expensive borrowings?*

Mr. Lynch: *Well, the product was available, and the product---*

Ms. Allan: *Was not advertised.*

Mr. Lynch: *It was not advertised.*

It is useful to note that, when severe flooding devastated some regions in southern Manitoba in the Spring of 1997, and severe ice storms impacted residents of eastern Ontario, Quebec, New Brunswick, and Nova Scotia in January 1998, Revenue Canada made tax concessions and provided background information on tax matters to assist those victims of the disasters.

> *In an effort to assist Canadians in areas affected by the ice storm, and in the interest of fairness and flexibility, Revenue Canada is offering relief to those taxpayers who received financial assistance to help them through their period of hardship.*[37]

> *When disaster strikes, the federal government provides assistance to the provinces through the Disaster Financial Assistance Arrangements when the cost of dealing with the disaster would otherwise place an undue burden on the provincial economy. In general when victims of a disaster receive payments from the government for personal losses, these payments are not taxable.*[38]

No such information was made available by Revenue Canada to leaky condo owners in British Columbia.

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[37] Press Release, Revenue Canada, Federal tax relief for 1998 ice storm victims, March 11, 1999.

[38] Ibid., Taxation of Financial Assistance to Manitoba Flood Victims, June 17, 1997.

Quebec designates that trade qualification certification be compulsory for all construction trades. In Alberta, compulsory trades include almost all of the BC designations but also include boilermakers, crane operators, ironworkers, tilesetters, and welders. Ontario includes all of the BC designations (except sprinkler system installers) as well as mobile and tower crane operators.

The Commission noted in its first report that many had called for a system of trades training, qualification and compulsory certification for the residential building industry.

> *The provincial government should establish a system of subtrade registration and certification....[It] should take steps to strengthen the apprenticeship program for building trades in the province and establish a requirement for trades qualification in the building trades. The fact that many of the workers engaged in residential construction have no trades qualifications is a concern. The difficulty that design professionals have had in assuming quality construction is directly related to the lack of knowledge and skill in the industry.*
>
> *- Tom Timm, Chief Inspector, City of Vancouver*

This position was reinforced during the recent hearings, by Douglas Watts, Building Envelope Specialist, City of Vancouver.

> ***Recommendation #35: That the Homeowner Protection Legislation include the authority for the Homeowner Protection Office to recommend compulsory trade certification related to multi-family residential construction.***

The HPO Act, Section 19 (2), provides HPO with the authority to advise the provincial government to designate an occupation as a compulsory certification occupation, or a designated trade as a compulsory certification trade. To date, HPO has made no such recommendations.

C. Subcontractor Licensing

> ***Recommendation #22: That the residential construction industry be regulated under public authority through a Regulatory and Licensing arm of the Homeowner Protection Office.***

Recommendation #22 is incorporated in the *HPO Act*, Section 14. The Regulations, Section 32-2(e) allows for the regulation and licensing of sub contractors. It was the Commission's conclusion that an effective and qualified labour force required the registration and licensing of subcontractors, independent contractors, and renovation contractors.

In the absence of contractors being licensed and regulated, it is possible for non-qualified trades workers to continue dominating the residential construction workforce. Given the nature of the construction industry, the sub-tendering of bids (also known as bid shopping) removes developers and general contractors from those people actually doing the work. Without regulation, the market forces of a non-level playing field, especially in the construction industry, lead to an

underground economy. This drives non-qualified workers into the sub-trades, making it harder for qualified workers to be employed.

While renovation contractors will become licensed and regulated in the near term, the HPO has yet to develop an implementation plan for the licensing of residential sub contractors. Neither category should be unregulated because, as noted above, it encourages an underground economy and the employment of unqualified workers.

> *Provincial government, when they enacted the regulations, made a decision to defer the licensing of subcontractor issues. They would let the system run for--for a period of time, 12 to 18 months, monitor that situation and then determine whether subcontractor licensing was necessary, and then consider it at that time.*
>
> *-Shayne Ramsay, CEO, HPO*
> *December 7, 1999*

It is appreciated that the time constraints faced by HPO staff in formulating the regulations, would require that their first order of concern be vendor/developers and general contractors. Presumably, that is why the discussion paper, "Homeowner Protection Act - 1998: Proposed Implementation of Residential Builder Licensing and Warranty Provisions" stated, *"the issue of sub-contractor licensing, including the licensing of independent contractors and labour contractors will be considered in 1999."*

It is strongly recommended that HPO maintain a registry of building sub contractors and that this registry, like the vendor/builder or general contractor registry, be accessible to the public at all times. The matter of actual licensing, the fee for these licenses, and other relevant information, can be left for development over the course of this year. Furthermore, to easily administer the registration of residential building sub contractors, there could be a requirement that only those with annual gross revenues of over $30,000 register with the HPO, since this is the floor which establishes a GST registerable company.

The proposed definition for a sub contractor to be included in registration and licensing is:

> ***Residential building subcontractor: means a residential building subcontractor with gross revenue of $30,000 or more, that is engaged under contract by a developer/builder or general contractor to perform or cause to be performed part of the construction of a new home.***
>
> ***Residential building subcontractor registry: residential building sub-contractors shall submit the following information for the Homeowner Protection Office registry:***
>
> *i) the name of the subcontractor, address, postal code, phone, fax and e-mail address;*
> *ii) if the applicant is a corporation, the name of a director nominee of the corporation who agrees to act as a representative of the corporation and in whose name the registry will list;*

skilled trades to be available in the construction industry....When more of those tradesmen who really have the real solid skills behind them retire, we're going to be in significant trouble in terms of construction, and I think there is a real need for further trades education programs.

- Doug Watts, Building Envelope Specialist, City of Vancouver
November 16, 1999

Given recent cutbacks in this area, both industry and labour representatives expressed deep concern about the lack of provincial government financial support. The Commission urged, in recommendation #6, that the provincial government through ITAC, allocate sufficient resources for training and apprenticeship programs, in association with business and labour in the residential construction industry. Regretfully, this recommendation has not been implemented. The Commission again urges the adoption of this recommendation.

Recommendation #6: That the provincial government allocate sufficient resources for training and apprenticeship programs, in association with business and labour in the residential construction industry, through the Industry Trade Apprenticeship Commission (ITAC).

Part II - Volume II Recommendation #3: That the provincial government through the Industry Trade Apprenticeship Commission (ITAC) tighten up on apprenticeship ratios to offer the best training possible to residential construction workers. Related to this area is the requirement for a proper and effective trades training system.

IV. Financial Institutions

It was noted in the first Commission's report that there were numerous oral and written presentations from condo owners and strata councils stating that financial institutions were unresponsive and insensitive to their needs. As the recommendations in the first report assisted financially burdened homeowners and substantially improved residential real estate market conditions, financial institutions become the direct beneficiaries. Not only are mortgage defaults and bankruptcies mitigated, commercial loans to developers increase in a return to healthy real estate market conditions.

Accordingly, the Commission had recommended that there be a nominal contribution from financial institutions. In response to a request for the funding from the Minister of Municipal Affairs, the financial institutions declined to provide any financial support to the Reconstruction Fund.

Recommendation #51: Financial Institutions operating in BC be requested to contribute, on a pro rata basis, based on their residential mortgage portfolio, $10 million to the Reconstruction Fund.

A. Reconstruction Fund Benefits

Although requested by the Commission, both the chartered banks, through the Canadian Bankers Association (CBA) and the credit unions through Central Credit Union of British Columbia (CCUBC), declined to appear before the inquiry. They had also declined a request to present during the first Commission of Inquiry.

> *Our efforts to deal with individuals on a one-to-one basis in a compassionate way has been described in some detail in two written submissions and we therefore remain of the opinion that there would be little purpose served in making a verbal presentation.*
>
> *- Paul Griffen, Canadian Bankers Association*
> *December 8, 1999.*

The banks and credit unions' reluctance to come forward and discuss the condominium crisis with the Commission has insulated them from the problem. Surprisingly, the credit unions, who pride themselves on their community involvement and commitment have been just as reluctant as the banks to take a leadership role in ensuring foreclosures are minimized. The following table summarizes approved loans by financial institution.

Benefits to Financial Institutions
As of January 31, 2000

Table 9

Financial Institution	Total Loans	HPO Loan Amount	Total Existing Mortgages
Royal Bank	205	$4,116,000	$21,973,000
Vancity Savings	170	$3,209,000	$17,582,000
Toronto Dominion	158	$3,056,000	$16,722,000
Bank of Nova Scotia	153	$2,832,000	$16,205,000
Canada Trusco	140	$2,483,000	$14,359,000
Bank of Montreal	132	$2,399,000	$13,422,000
HSBC	75	$1,247,000	$ 7,262,000
Surrey Metro Savings	39	$ 714,000	$ 4,043,000
Richmond Savings	33	$ 538,000	$ 3,447,000
First Heritage	26	$ 545,000	$ 2,748,000
National Trust	25	$ 542,000	$ 2,471,000
All others	427	$ 7,902,000	$ 44,409,000
Total	**1,583**	**$29,583,000**	**$164,643,000**

Source: HPO

The Reconstruction Fund has benefited financial institutions who hold the first mortgage on condominiums with building envelope failure. As of January 31, 2000, the HPO has approved a

total of 1,897 loans for approximately $36 million, representing $179 million in existing mortgage loans (prior to repair mortgages). These loans would likely have represented foreclosures, if the HPO financing had not been made available. Thirty-seven percent of mortgages are non-insured and, therefore are held by financial institutions.

Without the provincial Reconstruction Loan Fund, financial institutions would have been negatively impacted in the amount $47.5 million in terms of a drain on cash flow, and an actual financial loss due to foreclosures of about $23.8 million--a direct write off on their balance sheets.[36]

Since there are financial institutions, other than banks and credit unions, who hold mortgages for leaky condos, in aggregate 1,583 non-insured loans have been made. In the absence of the Reconstruction Fund, this represents a cash flow loss to private sector financial institutions of approximately $61 million and a real loss of close to $30.5 million.

Part II - Volume II Recommendation #4: That the provincial government bring in adjustments to the Corporation Capital Tax Act so that a dedicated revenue amount of $30 million ($10 million per year over three years) be obtained from financial institutions for financing the Research and Education activities of the HPO. It is further recommended that this fund be used as a capital fund and the interest earned each year be allocated to research and education as set forth by the Provincial Advisory Council.

B. RRSPs

In the first Commission's report, recommendations were made which would assist homeowners who had no recourse in financing their special assessments other than the liquidation of their RRSPs.

Recommendation #75: The same rules as apply for use of RRSP funds for the down payment of a home apply for any homeowners, resident in BC, who wants to undertake repairs. This would mean that an individual and spouse could withdraw up to $20,000 each without penalty, to be repaid within 15 years on a schedule of at least 1/15 per year.

Recommendation #76: The rules respecting the use of RRSP be applied retroactively for any taxpayer who has withdrawn RRSP funds to effect repairs under a special assessment. The taxpayer would apply for their income tax rebate in their 1998 tax return, which would be equivalent to the taxes they paid for withdrawals related to homeowner repairs or renovations in their taxable income.

[36] This assumes a net decline in the value of the property of 50 percent of the mortgage amount.

While there was no response from Revenue Canada or CMHC, the Commission, upon reconvening, explored the availability of self-directed mortgages which allow homeowners to borrow their own funds for home repairs.

Commission staff inquired at local banks and credit unions and discovered that:

a) financial institution staff did not know very much about this product; and
b) when they did know about the product, it was actively discouraged.

It was claimed by CBA and CCUBC that this option was complex and costly. For example in a letter from Mr. Paul Griffen, CBA, on December 8, 1999, it was explained that a self-directed mortgages:

> *requires a level of financial maturity on the part of the client and there are strict guidelines concerning the remaining equity position in the subject property...one estimate puts the break-even point in the $60,0000 range....Most customer do not have sufficient funds to justify the expense.*

The information from the financial institutions is misleading. It represents a lack of knowledge concerning what the besieged condo owner is facing when required to pay a special levy. The following analysis was presented, on November 3, 1999, in questioning CMHC.

> *If I have a $20,000 special assessment, and I have to go to my bank to get a personal loan at 9 percent , and pay for that out of after-tax dollars, that's one thing....But most people are looking at liquidating their RRSPs....So we're facing a situation where a consumer may only have an RRSP for $30,000, and not knowing about this product, liquidated $20,000, paid a 50-percent tax rate on it, and now has no opportunity to put that money back into their retirement savings....Wouldn't it be incumbent upon the banks, and in fact CMHC, to help identify this for consumers?*

The Commission made other consumer support recommendations in its first report, as well as financial support recommendations in Part II, Volume I.

> ***Recommendation #46: That financial institutions, or CMHC, provide to the borrower, a complete copy of any appraisal or inspection conducted in the process of obtaining mortgage loan approval.***

In the event that the financial institution does undertake to have an appraisal done, the consumer should be given a copy of that appraisal. It is not known precisely which financial institutions, as a matter of policy, make available appraisals to their clients. An exploratory phone call to the Royal Bank revealed that the Royal has a stated policy, brought in within the past year that, if requested, an appraisal would be made available to the client. A similar call to Central Credit Union of British Columbia revealed that Credit Unions, as a matter of policy, do not make

appraisals available to the homeowner. Exploratory requests regarding the approach would be necessary to determine the practice conducted by each institution.

V. CMHC

Canada Mortgage and Housing Corporation (CMHC) is the federal government's housing agency and a crown corporation providing mortgage loan insurance, assisted home ownership, research and information transfer. In its 1998 annual report, the Chairman, Mr. Peter Smith said:

> *CMHC is involved in many different types of activity, from ensuring access to mortgage financing to supporting assisted housing, to researching the housing technologies that will shape the living environments of tomorrow. In these and other areas, CMHC touches the lives of hundreds of thousands of Canadians every year. The ability of the Board of Directors to provide good corporate governance is critical to CMHC's ability to carry out its mission successfully. Effective stewardship of our crown corporation inspires the trust of our partners in the housing industry and the confidence of Canadians who rely on us to help them realize their dreams of home ownership. Good governance is a responsibility we have not only to the Government of Canada, but also to the homebuyers, housing professionals and other clients we serve every day. It is a responsibility we take seriously.*

The Commission has received numerous presentations and submissions from Strata Councils and individual homeowners stating emphatically that the governance and fiduciary responsibility referred to in Chairman Smith's statement, has failed when applied to multi-family residential construction in British Columbia. This has been further aggravated by the unique relationship between CMHC and NHW, and a lack of stewardship by CMHC in ensuring that the home warranty company they mandated was a viable and prudent warranty company.

> *The federal government, through CMHC, has been offering financial incentives to first time buyers to enter the market. These incentives included borrowing down payment funds from RRSPs, and high-ratio mortgage insurance. For a fee, CMHC has been insuring the high-ratio portion of a mortgage to financial institutions. It is the nature of the requirements for CMHC approval that contribute to the crisis precipitated by the NHW receivership. In order to qualify for CMHC insurance on a new building, a first time buyer was required to purchase in a development, insured by an approved warranty provider. To the best of our knowledge, the only acceptable provider to CMHC was NHW. CMHC would not approve the purchase of a property insured by the developer or another provider.*
>
> *In essence, the position of CMHC in this matter forced many new owners into a business relationship with a company (NHW) that ultimately proved insolvent.*

A. CMHC and NHW

NHW had as its sole shareholder CHBA-BC. CMHC maintains that this structure was an acceptable "arms-length" relationship for CMHC mortgage loan insurance policies. Thus, NHW was given a monopoly position (effectively, until 1996) by CMHC, mandating all prospective high-ratio mortgage purchasers to utilize home warranty provided by NHW. If this "arms-length" structure was acceptable then, at minimum, there was some obligation by CMHC to ensure that their mandated company was a prudent insurance company with proper underwriting and reserve practices.

Once CMHC deemed these companies were important instruments for their mortgage loan insurance policies, it fell upon CMHC to ensure that the product they required, was a good and reliable product.

It is alarming that, despite the mounting evidence and information regarding NHW's claims handling practices, brought forward during the Commission's first hearings, CMHC undertook no action to ensure NHW was fulfilling its responsibilities as an approved warranty provider.

Reviewing the Minutes of NHW from 1976, the Commission has found that, without CMHC's support, there would not have been builder/association-run home warranty companies across the country.

> *As you are all no doubt aware, the Federal Minister responsible for housing, Mr. Oullette, announced, during the HUDAC [now CHBA-BC] National Convention in Quebec City, that all CMHC loans for housing for sale units, must be covered by Warranty, as of July 1, 1978. In actual fact, I believe it is safe to say, that within BC at the present time, CMHC is requiring a builder to be registered with the Warranty Program, in order to secure funds.*
>
> *The positive impact of this move will be recognized in a marked increase in builder registrations and home enrollments.*[39]

Although there was a proposal by CMHC that the Warranty Board of Directors should comprise 25 percent non-builders, this never took place.

> *While considerable credit can be attributed to the Company's very aggressive marketing program, it must also be acknowledged, with the suspension of business order served on the Mortgage Insurance Company of Canada by the Federal Superintendent of Financial Institutions, this action has created a monopoly for CMHC. CMHC is responsible for administration of the National Housing Act which specifically requires warranty on residences financed through the National Housing Act*[40].

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[39] NHW Report to the Board, M. Manson, Chairman, HUDAC BC Council, March 1978, Appendix A - P1.
[40] NHW, Board Minutes, October 29, 1993, page 3.

The protected, and somewhat guaranteed, market NHW enjoyed continued until 1994. It was noted in the Board Minutes that:

> *CMHC is under review by the Federal Ministry of Industry for what is being perceived as a monopolistic practice in endorsing only the New Home Warranty Programs that currently exist.*[41]

> *Pafco Insurance Company has requested under the National Housing Act to provide new home warranty coverage. This request has been under debate for approximately 3 years and when denied Pafco applied to a higher constitutional authority. it is now clear that CMHC has no constitutional authority to preclude Pafco, or any other insurance company, from providing warranty coverage in a competitive market place.*[42]

This brief historical account shows quite clearly that CMHC protected NHW from any competitive pressures for nearly 20 of its 24 years of existence. For CMHC to now walk away and claim "we had nothing to do with NHW" is not consistent with the facts. CMHC should have ensured that the warranty company that they protected and encouraged had proper underwriting practices; adequate reserves; adequate inspections; fee schedule based upon risk; and fee increases that would ensure the company remained solvent.

B. CMHC and Developer Contract Violations

When NHW declared insolvency, CMHC sent out a press release on April 16, 1999, announcing that warranty replacement coverage for CMHC mortgage loan insurance would be required for those multi-unit residential buildings initially covered by NHW. However, when GE Capital, CMHC's competitor in this area, made an announcement that they were not going to require replacement warranty for pre-approved buildings, CMHC reversed its position.

> *The fact of the matter is that we were intending to ask for replacement warranty, but when finding out our competitor was taking a different position, which would affect market share, we made a corporate decision that we would match their requirement.*
>
> *- Jim Lynch, General Manager for BC, CMHC*
> *November 3, 1999*

CMHC's position on this is puzzling. There is no real competition in this area. A duopoly exists because there are only two companies offering mortgage insurance, with CMHC still maintaining the major share of the market. CMHC felt it had to provide lower-quality consumer protection because of a concern over loss of market share. CMHC did nothing to assist homeowners who had purchased because they valued warranty coverage, and when it was no longer available, wished to void their purchase contract.

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[41] NHW, Board Minutes, November 15/16, 1994, page 3.
[42] NHW, Board Minutes, March 30, 1995, page 2.

I was extremely concerned about the leaky condominium crisis when I chose to purchase my condominium. I wanted to make sure that the condominium I chose had sufficient third-party warranty coverage. On April 9, 1998, I purchased a preconstruction condominium from Aragon Properties Limited. The condominium was scheduled for occupancy in early 1999. I chose this particular condominium based on the fact that the developer offered a ten-year extended warranty through the New Home Warranty Program, instead of the usual five that was offered elsewhere. With the New Home Warranty Program collapse, the developer agreed to replace the New Home Warranty Program with another third-party warranty insurer called the National Home Warranty Program. Just days before I was expecting to close on the sale of my condominium, I received a letter from a Mr. Tomlinsen, a lawyer who was acting as the closing agent for the parties concerned. In his letter [it was] stated that a third-party warranty insurer would not be available upon closing.

In another bizarre twist to the story, the Canada Housing and Mortgage Corporation decided, when the New Home Warranty Program declared bankruptcy, to relax their usual requirement that all high-ratio mortgages be insured by a third-party warranty insurer.

This unilateral decision by CMHC allows the banks to go ahead and issue high-ratio mortgages and left mortgagors, like myself, without a third-party warranty insurer for their mortgages.

Today I am faced with mounting legal costs in an attempt to get my money back from the developer who promised a replacement third-party warranty and has demanded that I move into my condominium without one.

- Finn Ohrling, Condo Purchaser
October 5, 1999

The above matter provoked the following exchange between the Commissioner and Mr. Lynch during Mr. Lynch's testimony.

Mr. Barrett: *Now, I don't want to be judgmental, but I'm a little bit concerned about whether or not you've forgotten your consumer protection mandate....I listened very closely, and I'm not sure, but if indeed you did send a bulletin out, warning the product would not be insured because of that gap at the close of New Home Warranty, and the private competitor said, "Well, we'll disabuse ourselves of any concern of that,." and you then dismissed your own warning letter and said, "Well, we'd better meet the private competition." But you're a Crown Corporation, and you've got a consumer protection mandate. I don't understand how you reach from one to the other.*

Mr. Lynch: *...this issue of consumer protection...has a whole bunch of issues around this, that we have to make decisions on....I can perfectly well see how*

some would see that as not protecting the consumer..
***Mr. Barrett:** ...Now, I don't know, but I'm worried, what happened to the consumer protection role of CMHC?*

C. CMHC and Foreclosures

CMHC said that it has not undertaken any analysis regarding the potential repair problem of multi-family residential buildings in BC. Given CMHC's exposure to the leaky condo problem, the lack of analysis is surprising. CMHC holds the mortgage insurance for 30 - 40 percent of the multi-unit residential market. About 70 percent of the people with high-ratio financing did so because they could not afford a greater down payment--they did not have equity. As a result, CMHC is likely to experience the impact of a large number of homeowne who are unable to pay their assessments and, consequently declare bankruptcy or trigger foreclosure.

As noted in the Commission's report, Part II, Volume I, the provincial Reconstruction Loan Program has bailed out the banks, credit unions, and CMHC. Because the loan fund represents the "last resort" for applicants, nearly all would have defaulted on their existing home mortgage, if the fund was not available. Consequently, it has been estimated that, in the absence of the Reconstruction Program, the number of foreclosures and/or bankruptcies, would have increased by about 2,500 during the past year. The estimated savings, because those bankruptcies did not occur, is about $140 million--most of which is a direct benefit to the financial institutions and CMHC. Since 63 percent of all HPO loans are to homeowners with CMHC- insured mortgages, CMHC has benefited by about $90 million.

NHW's acting CEO and Chairman, Jim Thomson, wrote to CMHC on May 26, 1999, alerting the Corporation to the exposure arising from NHW's failure and recommending that CMHC contribute to the cost of repairs arising from faulty condominiums as a means of avoiding numerous foreclosures and bankruptcies. NHW estimated the cost of each foreclosure at $65,500. NHW did not receive a reply to its letter.

D. CMHC and CHBA-BC

The Commission became aware that Mr. Jeff Loucks, a senior manager with CMHC, was a Board member of CHBA-BC and a member of the Executive Committee. Questions were raised of Mr. Jim Lynch regarding CMHC's possible knowledge of NHW's operations, activities, and financial position. Mr. Lynch informed the Commission that Mr. Loucks was not on the Board as a result of his employment at CMHC.

Mr. Loucks, CMHC Manager of Home Ownership Insurance Products confirmed that he joined the board of Directors of CHBA-BC in October 1997, was a member of the Executive Committee and performed in the capacity of Secretary/Treasurer, then as Secretary.

Mr. Loucks maintains that he sits on the CHBA-BC Board in a personal capacity, even though he

Chapter FIVE

Government

I. Federal

Widespread building envelope failures in British Columbia represent a catastrophic disaster resulting in serious harm to the health, safety and welfare of up to 50,000 families. The Commission heard compelling testimony suggesting a crisis of unprecedented proportions.

While the emotional and physical costs arising from this disaster cannot be erased, the Commission recommended a Compensation Plan in Part II, Volume I--involving the federal government--to demonstrate that Canadian and BC societies are not walking away from these victims.

> ***Recommendation #47: It is imperative that the federal government and CMHC provide a significant contribution toward homeowners who have been hurt by this crisis of quality, not only to alleviate the threat of bankruptcy for individual homeowners, but also to protect the solvency of CMHC, and the stability in the residential housing market of British Columbia.***

A Reconstruction Loan Fund has been established by the provincial government and is funded through a levy of $750 per unit on new residential construction in the coastal climate of British Columbia, with $75 million in bridge financing from the provincial government. The federal government offered a $75 million bridge financing loan for the Reconstruction Fund, but since it carried an interest rate higher than the provincial borrowing rate in capital markets, the province rejected the proposal.

As well as the above, the Commission also recommended it its first report that:

> ***Recommendation #77: Since the treatment of homeowners, who rent their units, is different from homeowners who live in their units, it is imperative that the cost of all qualified repairs be deducted from income. The application of this exemption would be retroactive and, as such, would provide a cost carry-back and carry-forward for homeowners. The application of this recommendation requires federal and provincial government approvals and, as such, is a cost-shared, tax expenditure.***
>
> ***Recommendation #79: For purposes of reconstruction, all GST and PST, payable on qualified repairs ad renovations, should be repealed. In this way, the owner/occupier is treated by taxation the same way as the owner/landlord.***
>
> ***Recommendation #80: All GST and PST that has been paid on renovations should be refunded to homeowners.***

is identified in CHBA-BC minutes as a representative of CMHC, and CMHC pays the CHBA-BC membership dues which allow Mr. Louks to be on the Board. Mr. Lynch approved of Mr. Loucks' appointment when he was invited by CHBA-BC to become a Board member, but also informed the Commission that Mr. Loucks was there in a personal capacity, and that most of the meetings were held in the evenings. Mr. Lynch also assured the Commission that Mr. Loucks withdrew himself, with respect to certain items, so as to not engage in any potential issues of conflict.

Following a review of CHBA-BC Minutes, it is clear that Mr. Loucks did not excuse himself from any discussions at the CHBA-BC Board or Executive Committee meetings (which took place mainly during the day). Mr. Loucks provided CHBA-BC with information regarding CMHC activities and policy, and was actively involved in all issues of CHBA-BC business, including presentations by Mr. David Verge, CEO of NHW.

E. CMHC and Co-operatives

The Commission received a number of presentations from co-operative housing owners whose building have been subject to the same kind of premature building envelope leaks that strata corporations have faced, except that the repairs required seem to be more extensive and hence, more expensive, than strata buildings.

Co-op housing had been supported by CMHC, as the federal government housing agency, but differs from rental housing in that members are not charged more than 25 to 30 percent of their income for housing. However, to cover the cost of repairs, co-op members have had to apply for second- and third-mortgages. As mortgage payments increase, the federal subsidy for low-income residents remains the same, resulting in cash-strapped residents having to vacate the building. The social make-up of the buildings is changing, since suites have to be rented to those who can afford them.

The Commission has heard testimony that CMHC delayed renovations in some CMHC social housing buildings. Ms. Shirley Hunter, Kitsilano Terrace Housing Co-op Chair, spoke to the Commission on November 15, 1999.

> ***Ms. Allan:*** *Did the City Health Inspector come out and look at the building?*
> ***Ms. Hunter:*** *...he did come out once. He said the recourse at the time was to condemn the suites.*
> ***Ms. Allan:*** *To condemn the suites?*
> ***Ms. Hunter:*** *Yes. In fact two of them were vacant...just before we retained the second mortgage. Two of them were so badly filled with mould and water, they were empty for seven months each, and the--of course we had no revenue from this. And that's why we had to wait a whole year for our second mortgage. CMHC said we couldn't have a second mortgage and then finally when they came out and saw--we had the Health Inspector and they saw the two suites were uninhabitable for seven months, they finally approved our second mortgage.*

Arising from recommendations in the first Barrett Commission report, this particular co-op applied for and was granted a 10-year, interest-free loan from HPO. Unfortunately, CMHC as the holder of the mortgage on the building needed to approve the arrangement.

> *We have been waiting patiently since August when the Vancouver office of CMHC cleared all our paperwork, they were satisfied with our financial projections, and that we could carry a third mortgage. As you can understand, being a housing co-op, third mortgages--this third mortgage is really hurting us, and as you can tell by the increasing over the years and the levy, this has hurt us greatly.*
>
> *From 1998--1999 we've had 12 more housing vacancies, and we already received this week another notice that another person will be vacating, again due to the wet.*
>
> *We were hoping, because the papers went to Ottawa in August, that we could probably start October the 1st. Because of the delay, the suites that are wet, are getting wetter. We did put tarps on two of the worst suites....As I say, we've been delayed. We can't possibly even tender the contracts, which will take us another six weeks, because we are waiting for this approval. We are on weekly contact with CMHC, and all they keep saying is the "papers are in Ottawa, the papers are in Ottawa."*
>
> *- Shirley Hunter, Co-op Chair*
> *November 15, 1999*

Similar experiences with attempts to repair their buildings have been related to the Commission by other co-operative representatives.

> *Over two-and-a-half years, trying to deal with CMHC practically to get this work-out agreement, we have felt unreasonably stymied and delayed by them.*
>
> *- Richard Halliday, Co-op Member*
> *December 2, 1999*

The Commission has been informed that although a Letter of Intent was signed with CMHC on January 26, 2000, to allow repairs to commence, Kitsilano Terrace is still awaiting final approval from CMHC in Ottawa. Other co-operatives are in a similar situation.

The federal government has rejected all of the Commission's recommendations on providing tax relief for those affected by the repair costs of their water-damaged home. The Minister Responsible for CMHC, Mr. Gagliano, in his news release on November 17, 1998 and letter to the Minister of Municipal Affairs of BC on November 27, 1998, stated:

> *The Government of Canada is of the view that provision of federal tax relief would raise serious equity and administrative issues. Furthermore, allowing owners of water-damaged homes in BC to deduct the costs of repair for income tax purposes and exempt from the GST would be unfair to other homeowners whose homes may also be in need of repair but who would be denied similar exemptions. The Government of Canada must be mindful of fairness to all Canadian taxpayers.*
>
> *- CMHC Letter to the Commission*
> *October 4, 1999*

In response to one BC homeowner, the federal Minister of Finance, the Honourable Paul Martin, on behalf of the government of Canada, stated that:

> *...providing tax relief as recommended by the Commission would raise serious equity and administrative issues. Allowing owners of water-damaged dwellings in BC to deduct the costs of repair and avoid sales taxes would be unfair to other homeowners whose homes may also be in need of repair and who would be denied this treatment.*
>
> *In addition, it would be very difficult to justify special tax treatment for unexpected repair costs in some circumstances (such as water damage), and not in others. As you no doubt know, similar proposals for tax relief were put forward in the wake of the Saguenay and Manitoba floods, as well as the Quebec/Ontario ice storm. As you stated, in those circumstances, many homeowners experienced similar costs to those of owners of water-damaged BC homes. In all of these cases, the federal government cooperated with the provinces in providing direct financial assistance to victims. However, it was recognized that the tax system, which is designed to apply to all taxpayers in equal measure, is not the proper tool to provide relief in these unique situations.*
>
> *- Letter to William Wahl from Honourable Paul Martin*
> *August 26, 1999*

Accordingly, the Commission's recommendations on GST exemptions (plus refunds for repair renovations already paid) and equal treatment for homeowners who rent and those who reside in their own homes, have been turned down by the federal government.

The Commission notes the position of the federal government, that the federal tax system not be used to provide financial support for leaky condo owners. However, as the Minister of Finance

states in the above letter, in reference to federal support for the Quebec/Ontario ice storm, *many homeowners experienced similar costs to those of owners of water-damaged BC homes. In all of these cases, the federal government cooperated with the provinces in providing direct financial assistance to victims.*

In fact, the following table provides the most recent estimates of the direct federal financial contribution for assistance because of the ice storm.

Federal Funding Assistance for the Ice Storm

Table 10

Department	Estimated Contributions ($ millions)
Emergency Preparedness Canada	582.4
Canadian Armed Forces	44
Canada Economic Development	7
Industry Canada	2.9
Agriculture and Agri-Food Canada	13.6
Human Resources Development Canada	67.2
Natural Resources Canada	(to be determined)
Total	**$717.1**

Source: Emergency Preparedness Canada.

The Commission recognizes Minister Martin's desire to treat all Canadians fairly and accepts his reasoning. Such reasoning is completely compatible with the recommendations in Part II, Volume I, and recommendations in this report.

II. Provincial Government

The importance of residential construction to BC's economic growth was emphasized in the first Commission's report and Part II, Volume I. By way of review, residential construction is the second largest industrial activity in the province, with approximately 10 percent of the province's annual output and 10 percent of the province's employment driven by this sector.

The major economic downturn in Asia; a significantly lower level of immigration; declining resource commodity prices; and out-migration from BC to other provinces, has caused a major decline in the BC housing sector. The Commission believes a significant contributor to this decline, particularly in the multi-family residential sector, is the leaky condo disaster.

Government structure should reflect the importance of residential construction to the economic health and well being of the province. Housing, as an area of public policy, has been neglected.

All housing issues, including those related to leaky condos, would benefit from a clearer, more direct focus. The responsibility for housing issues has resided in a number of ministries, for at least the past decade. This has contributed to some confusion in the industry.

> ***Part II - Volume II Recommendation #5: The provincial government create a Housing Ministry responsible for BC Housing, housing policy, residential construction, the Homeowner Protection Office, building standards, and the BC Building Code.***

At no time than the present has it been more critical to establish a positive environment for residential construction.

> ***Part II - Volume II Recommendation #6: A Legislative Select Standing Committee be established to review, annually, for the next five years, all housing issues.***

> ***Recommendation #3: That the role and responsibility of what was formerly the Building Standards Branch, be reinstated under the proposed Homeowner Protection Office, as part of the Education and Research function of this new body, and that it provide guidance and direction on both the interpretation and enforcement of the building code.***

Unfortunately, recommendation #3 has not been implemented, although the PAC has the authority to provide advice to the provincial government on the BC Building Code, federal authorities on the National Building Code, and the City of Vancouver on its Building Bylaw.

Without exception, every presenter who made mention of the Building Standards Branch during the first set of hearings, as well as the most recent one, called for its reinstatement. The interpretation of the Building Code, and the Building Code review and adoption process, rested with this body in the past; but never before has the need for this role and function been as great. A reduced staff complement, since the Branch was downsized in 1997, currently resides in the Ministry of Social Development and Economic Security. This staff attempts to meet the needs of the building industry. However, without the proper resources, the tasks arising out of the current crisis will prove too large; the industry need for support, too diverse. The status quo cannot be successful.

The Commission envisioned the HPO would carry out the Building Standards Branch function, supporting not only the Code interpretation and development needs of the residential construction industry, but also play an important role in the research and education mandate of the PAC. There is no reason why the Branch could not perform the standards function for all construction within the HPO.

The Commission strongly urges the implementation of recommendation #3, including that the Building Standard Branch role and function be housed in the HPO.

A. Homeowner Protection Office

One of the main responsibilities of the first Barrett Commission was to strengthen consumer protection and to ensure that the deterioration in housing construction standards never happened again. The establishment of the *Homeowner Protection Act*, which included the creation of the Homeowner Protection Office, arose from these aims. The primary purposes of the HPO include:

i) mandatory, private sector, third-party, home warranty;
ii) residential builder registration and licensing;
iii) assistance to homeowners of leaky homes as a lender of last resort through the Reconstruction Loan Program; and
iv) research and education to assist consumers and the industry.

The provincial government responded to the recommendations quickly and the HPO was approved by the Legislature in July 1998. The HPO commenced operations on October 1, 1998. The HPO under the authority of the *Homeowner Protection Act*, is a crown corporation, governed by a Board of Directors, appointed by the Minister of Social Development and Economic Security. The office also receives advice from the Provincial Advisory Committee (PAC) on homeowner protection, on emerging issues in residential construction, and on the BC Building Code. The PAC includes representation from a broad range of interests including consumer, industry, professionals, and local government.

From the submissions and presentations made to the second inquiry, it is clear that there has been unanimous endorsement of the HPO and the benefits the residential construction industry has received as a result of its creation. The Commission would like to congratulate the efforts of the staff of the HPO in organizing its activities in a timely and effective manner to ensure a proper mandatory warranty and licensing system is in place; financial assistance to those most in need; and education and information being produced and widely circulated.

1. Homeowner Reconstruction Loan Program

Among recommendations in the first Commission report was the establishment of the Reconstruction Loan Fund. The Commission in Part II, Volume I, has since addressed the major lack of financial support and the attendant economic crisis arising from the lack of response by the federal government. The Commission recommended a Grant Program which would not only assist homeowners hit by this disaster, avoid financial pressures being borne by the general population far in excess of what is necessary, but also provide a form of request that the federal government has suggested it could respond to.

Eligibility requirements for the Reconstruction Loan Program require that homeowners:

1. own a leaky condominium or home where the building envelope deteriorated

sooner than expected due to defective design or construction;
2. do not have savings or investments that could be used to pay for repairs (pension assets; RRSP assets, and the first $10,000 in liquid assets are exempt); and
3. do not have enough equity in their home to qualify for a conventional loan or they cannot afford the monthly payment on a conventional loan.

Loan amounts are based on the cost to repair the building envelope plus related legal costs. Participating lending institutions provide the principal for the loans. Homeowners make monthly, principal-only payments to the lending institutions at an affordable level set by the HPO. The HPO pays the interest portion of the loan directly to the lending institutions on behalf of the homeowners.

Co-operative housing projects are also eligible to apply for financial assistance under the Reconstruction Loan Program. Due to the ownership structure of co-operatives (no separate legal title to the individual units), the no-interest loans are provided directly to the co-operative.

Homeowner's Reconstruction Loan Program Summary
January 31, 2000

Table 11

	Number	Amount	Average
No-interest loans through first mortgage lender	1,551	$29,372,075	$18,938
No-interest loans through HPO	105	$1,837,845	$17,503
Deferred Payment Loans through HPO	241	$4,908,550	$20,367
Co-operative Housing Loan Program	573	$21,799,900	$38,045
Total	2,470	$57,918,360	$23,449

Source: HPO

HPO reports that, in most cases, no more than ten percent of the homeowners in a building qualify for a no-interest repair loan. However, in some buildings the number of homeowners who qualify could be as high as fifty percent.

HPO had received 2,562 loan applications and had approved about 1,900 no-interest loans in 248 buildings, totaling $36.1 million as of January 31, 2000. About 311 applications failed to meet the eligibility criteria, or were withdrawn, with 354 applications currently being processed. The average loan amount is $19,000.[43]

Lower mainland municipalities of Coquitlam, Surrey, and Vancouver represent the larger sources of loan applications followed by Victoria.

[43] The Renewal of Trust in Residential Construction, Part II, Volume I also deals with these issues (Chapter TWO, pages 18 - 20).

Loan Applications by Geographic Location
As At January 31, 2000

Table 12

Location	Number	Percent
Coquitlam	430	16.8
Surrey	395	15.4
Vancouver	357	13.9
Victoria	220	8.6
Abbotsford	208	8.1
Port Coquitlam	168	6.6
Richmond	134	5.2
New Westminster	129	5.0
Delta	81	3.2
Langley	74	2.9
Nanaimo	66	2.6
North Vancouver	62	2.4
Pitt Meadows	52	2.0
Burnaby	37	1.4
Nelson	29	1.1
White Rock	20	1.1
Maple Ridge	24	0.9
Total	**2,562**	**100**

Source: HPO, Errors due to rounding, Excludes the loans to Co-operative Housing.

The following table shows the approved loans by year of building construction. It is interesting to observe that a significant number of buildings with premature building envelope failures were built prior to 1989, giving rise to questions regarding the industry's allegations that the 1985 BC Building Code is to blame (the 1985 Code, adopted in late 1987 would not have applied to buildings prior to 1989). In fact, as a proportion of the total multi-unit buildings constructed from 1983 to 1998, pre-1989 building failures represent a greater proportion of the total residential stock than post-1989 failures.

Mr. Shayne Ramsay, CEO of the HPO, confirmed in testimony before the commission that the collapse of NHW will further intensify the tremendous pressure on the Reconstruction Program by pulling another group of people into the problem of financing repair costs--people who assumed a significant portion would be handled by NHW.

Approved Loans and Buildings by Year of Construction
1984-1997

Table 13

Year	Approved Loans (%)	Buildings (%)
1997	1.4	0.6
1996	5.9	3.1
1995	11.8	3.1
1994	21.7	14.6
1993	16.4	15.9
1992	8.9	9.2
1991	7.5	9.2
1990	7.2	9.2
1989	5.0	11.6
1988	2.2	7.9
1987	0.2	0.6
1986	1.8	3.1
1985	5.3	2.4
1984	0.3	1.8
Prior 1984	3.8	5.5
Unknown	0.6	2.4

Source: HPO

An important aspect of the Reconstruction Fund is how both CMHC and the financial institutions "benefit" from the loan assistance program. Ironically, the provincial program has bailed out the banks, credit unions, and CMHC. Mr. Shayne Ramsay, CEO of HPO confirmed at the hearings on September 17, 1999, that the loan fund represented the "last resort" for the applicants, and that nearly all would have foreclosed on their existing home mortgage if the fund was not available. Approximately 63 percent of these mortgages are CMHC insured; 37 percent are not.

> ***Mr. Ramsay:*** *The general criteria is if a homeowner's able to qualify through conventional means, and by "conventional means", typically that's adding or increasing their first mortgage. They would have to meet the bank's TDS and GDS ratios. If the homeowner doesn't--is not able to obtain that kind of financing, they they're eligible for assistance under our program.*
> ***Ms. Allan:*** *Would it be fair to say that many of the people that come to you may have gone into foreclosure or bankruptcy if you weren't there?*
> ***Mr. Ramsay:*** *I think that's a fair statement.*
> ***Ms. Allan:*** *So if we're looking at the benefits of the Reconstruction Fund, not only do the homeowners benefit if they're able to qualify, but the banks and CMHC, who would be facing a defaulted loan, are also major beneficiaries of the fund?*
> ***Mr. Ramsay:*** *Yes, absolutely.*

Ms. Allan: *And so it would be fair to suggest---and I think you said the number of applicants that you have approved is---I forgot the number?*
Mr. Ramsay: *Slightly more than 1,000*[44]
Ms. Allan: *That some part of that number would have been in the foreclosure database.*
Mr. Ramsay: *I think you could assume a very high number, if not all, would have been in a foreclosure situation.*
Ms. Allan: *And since part of the Commission's work is to look at the impact on the economy and individuals as a result of the lack of quality construction and New Home Warranty's failure, is foreclosures and the impact on the economy, when we are looking at foreclosure information, it would then be fair to take some portion of that number and use that as what could have happened in the economy without some form of financial support for homeowners?*
Mr. Ramsay: *Yes*
Ms. Allan: *Okay. What percentage would you think would be a reasonable number of those thousand people?*
Mr. Ramsay: *...it would be a very high number. Probably safe to say almost all.*

The number of foreclosures would have been almost 2,500 more during the past year than what is already occurring. Notwithstanding the Reconstruction Loan Fund, many families and individuals are still unable to finance their special levy for repairs and are being forced into foreclosure or bankruptcy. The Commission has been informed that following a court judgment in a foreclosure being registered, the individual's credit rating is immediately assigned an eight (on a scale of one to nine) on their credit report. They may have had a perfect credit rating in the past--most of them have--but the foreclosure triggers an automatic eight with the Vancouver Credit Bureau.

When you have a poor credit rating...you may not be bondable, and...employment may be jeopardized.

- Bruce Chisholm, Trustee
October 14, 1999

Part II - Volume II Recommendation #7: The Superintendent of Bankruptcies Office classify leaky condominium foreclosures with a maximum rating of six or under which avoids employment jeopardy as a result of a foreclosure.

2. PST Relief

On June 28, 1998, the provincial government announced a provincial sales tax relief grant for repair costs to leaky homes. The grant, administered by the HPO, is based on a formula and applies to eligible repairs completed on or after July 28, 1998. While this grant follows

[44] As of January 31, 2000 the number is 2,470.

recommendations of the first Barrett Commission report, it does not apply to all repairs retroactively, which was part of the recommendation. Based on the Commission's estimate of the cost of repairs, the PST grant, if implemented retroactively would represent about $25 million over the next 5 - 7 years. As of January 31, 2000, the HPO has approved 27 applications, rejected 1, and has 5 in process, for a total of 33 applications received. The following table illustrates the financial implications of the program thus far.

Approved PST Grants
As of January 31, 2000

Table 14

	Total Approved Grants	Average per Strata Corporation	Average per Homeowner
Amount of Repairs	$14,447,000	$535,075	$15,930
Amount of Grant	$404,515	$14,980	$446

Source: HPO

3. Residential Builder Licensing and Mandatory Third-Party Warranty System

> ***Recommendation #38: Under the authority of the Homeowner Protection Act, immediate, mandatory warranty for all residential housing built, as well as units under going renovations for structural or building envelope purposes. All units to be enrolled prior to the start of construction or renovations to receive the benefit of inspections.***

As of July 1, 1999 building permit applications for new housing have been subject to licensing and warranty. The Commission understands that the private sector warranty companies have inspection requirements during construction. Licensing and warranty for repairs has not yet been introduced. The Commission strongly urges that this be a priority as many homeowners need the security provided by warranty on repairs.

The primary builder licensing requirement is registration with an insurance company. The builder then signs an agreement with the HPO undertaking to meet certain terms and conditions including compliance with regulations and standards that are applicable to the construction of the new home. If the builder breaches this or any other conditions of the agreement, the Registrar can suspend, revoke, or impose conditions on the builder license. Further, the HPO has informed the Commission that, over the next 12-18 months, additional requirements will be put in place for a builder to maintain their license. This will include mandatory education and training requirements.

One of the disclosure requirements in the license application and renewal process is whether or not the builder applicant has been refused home warranty insurance coverage by an insurance company. If the answer is yes, the Registrar will conduct additional investigations before the license is issued (or refuse to issue the license). Further, Section 9(4)(a) of the HPA allows the

Registrar to require reporting from the insurance company as to the risk profile of builders. This information will include builders who have been de-registered by the insurance company and the reasons for the de-registration. This will form part of the builder licensing consideration by the Registrar.

Due to the collapse of NHW, the licensing and regulation of warranty companies was delayed from April 30, 1999 to July 1, 1999. This delay caused significant confusion among consumers, and saw many builders taking out permits to avoid the registration and mandatory warranty deadline. Accordingly, the Commission issued an Interim Report on November 8, 1999.

In a number of presentations to the Commission, homeowners complained about the lack of consumer warranty protection and the lack of disclosure on currently-marketed homes. Ms. Nona Saunders, president of the Condominium Homeowners Association (CHOA), which has over 800 strata corporations, representing 27,000 units, told the Commission:

> *"there is a virtual dog's breakfast of warranty out there, and many unsuspecting buyers are not sure of what they're getting. The opportunity for developers to purchase stronger warranty, including that that would meet the new provisions of the legislation, is available but has not been widely embraced. We feel that this does create a risk for home buyers because they don't know what they're getting. And there should be some means in disclosure of exactly what is the warranty on the home you're buying today, what does it cover, who it's backed by, and what are the exclusions."*

Shayne Ramsay, Executive director of the Homeowner Protection Office, in his testimony to the Commission, has confirmed this myriad of coverages from non-existent to builder's own:

> *"where some of the newly-constructed homes on the market will have the 2-5-10 year mandatory warranty as required by the Act, while other new homes on the market constructed with building permits applied for before July 1st, which have a variety of different warranties or even no warranty at all."*

This problem has been compounded because Canada Mortgage and Housing Corporation (CMHC), in its provision of high-ratio mortgage insurance, did not make mandatory the replacement of its warranty coverage on new and unsold construction when New Home Warranty became insolvent and filed for bankruptcy protection.

Clearly, we have a problem. The magnitude could affect as many as 20,000 homes between 1999 and 2001. It is not only the permits taken out prior to July 1,1999 that are affected by the transition period, but also permits applied for prior to July 1, 1999 which may be pulled subsequent to that date. Permit renewals may also avoid mandatory warranty protection well beyond 1999.

The Commission made the following recommendations:

New regulations, introduced in May 1999 for residential construction disputes between homeowners and builders, are an attempt to achieve quicker and less expensive resolutions than are currently offered within the court system.

However, the Commission has heard from homeowners that because the builder often does not want to settle, the process is weak. The Commission recommends that mediation become binding. If the Compensation Plan is adopted, this problem should disappear.

B. Financial Institutions Commission (FICOM)

During the 1980s and 1990s, multi-family construction was the fastest growing component of BC's housing industry--an industry experiencing boom conditions until 1995. Since then, both single- and multi-family starts have fallen dramatically. However, the strata form of property ownership is very significant in the overall make-up of the housing stock, and provides the greatest future opportunity for home ownership in urban centres, including Victoria and Greater Vancouver. Solving construction quality problems in multi-family construction is of critical importance to the future quality of life in British Columbia.

FICOM currently has a staff of 80 and is organized into six departments. Of those six, the Insurance and Real Estate Departments are most relevant in rebuilding trust in residential construction. FICOM administers ten statutes, including the *Real Estate Act*, *Financial Institutions Act*, and *Condominium Act* (soon to be the Strata Property Act). These provide regulatory rules for the protection of the consuming public. The regulatory rules are to:

> *First, protect depositors and policy holders against the insolvency of insurance companies, trust companies, and credit unions and, second, to safeguard consumers against improper market conduct in the financial services and real estate industries.*
>
> *- Robert Hobart, CEO, FICOM*
> *November 1, 1999*

1. Strata Sales and Strata Corporation Issues

The Commission received a detailed presentation from Ms. Adrienne Murray, Deputy Superintendent of Real Estate and Mr. Robert Fawcett, Executive Director of the Real Estate Council, on the regulatory environment as it relates to real estate. The Commission also received presentations from numerous strata councils and homeowners who raised issues and concerns over the current regulatory environment. In particular, developer-employed (non-licensed) sales agents, disclosure statements, licensing of strata managers and strata management companies, and the *Condominium Act* (soon to be the Strata Property Act).

i) Developer-Employed (Non-Licensed) Agents

The Real Estate Act establishes the licensing of real estate agents. The majority of these

regulatory responsibilities have been assigned, or delegated, to the Real Estate Council, comprised of 19 members (14 elected agent-members, 3 salesperson members, and 2 public [layperson] members appointed by the provincial government).

Under the Act, individuals who act on behalf of another, for a fee, in the purchase and sale or rental of real estate, must be licensed. An agent's license is issued to a company and the majority of individuals are licensed as sales people or nominees.

> *The purpose of the licensing regime is to ensure that those transacting with agents of the owner in a real estate transaction can be assured that the agent has obtained the necessary education, is bonded, maintains errors and omissions insurance, is properly supervised by a nominee and is subject to the sanctions of the Real Estate Council in the event they misconduct themselves.*
>
> *- Robert Hobart, Superintendent of Real Estate*
> *October 14, 1999*

There are exemptions under the Act regarding the use of licensed agents in a real estate transaction. For example, anyone may sell their own real estate without employing a real estate agent. More importantly, in the area of residential construction, there is currently no requirement for licensing employees of a development company who sells or leases the property on behalf of that company. Therefore, a significant number of new home sales fall outside the Real Estate Council's authority.

The Commission has received representations requesting the that developers' marketing personnel, for the sale of multi-family homes, be licensed under the *Real Estate Act* as a method to further protect the public by ensuring adequate standards of education, regulation, and licensing.

> *In order to get licensed in British Columbia as a real estate sales person, you must complete the real estate salesperson's prelicensing course. That course is 26 chapters long with specific learning objectives...on the Real Estate Act, the Residential Tenancy Act, the Condominium Act, the law of agency, the law of contract, types of ownership and tenancies, basic design and construction, and condominiums. Once an individual has a salesperson's license, they must complete the applied real estate course. It's a condition of licensing [and]...covers information on marketing, contracts, financing, the offer and completion process, the Real Estate Act and Code of Ethics.*
>
> *- Robert Fawcett, Executive Officer, Real Estate Council*
> *January 13, 2000*

In addition to education standards, there are licensing and performance standards that real estate agents must meet. The British Columbia Real Estate Association (BCREA) is an association of real estate boards and associations and provides the multiple listing service (MLS), standard forms of contract, and has been delegated the continuing education responsibility by the Real Estate Council.

***Interim Bulletin Recommendation #1**: All advertising related to the marketing of new residential construction, with one or more units remaining for sale on or after November 15, 1999 must clearly identify the nature and scope of warranty coverage and whether or not this meets minimum industry standards as required by the Homeowner Protection Act and must place signage in front of the project that clearly indicates whether or not the project meets new Homeowner Protection Act standards.*

***Interim Bulletin Recommendation #2**: That the Homeowner Protection Act Regulations be amended to require that all residential construction permits, issued prior to July 1, 1999, be subject to the same regulatory and warranty requirement as permits issued subsequent to July 1,1999, if such permits are renewed on or after November 15, 1999.*

***Interim Bulletin Recommendation #3**: Require that the disclosure statements and prospectuses filed with the Financial Institutions Commission contain similar information to that described in Recommendation #1 above, and that existing prospectuses and disclosure statements, for buildings that have one or more units remaining for sale, file an amended prospectus and disclosure statement with the Superintendent of Real Estate.*

***Interim Bulletin Recommendation #4**: That builders/developers recognize the importance consumers place on adequate warranty protection as part of the conditions of sale and make all and best efforts to honour consumers' requests for return of deposit monies should promised warranty coverage prior to NHW's failure, not be replaced by the developer.*

The Commission is pleased with the statement released by the Superintendent of Real Estate that, effective December 17, 1999, all Disclosure Statements must advise purchasers whether the warranties being offered are required under the *Homeowner Protection Act.*

As of February 15, 2000, HPO reported nearly 1400 residential builders were licensed as per legislation. All registered builders must qualify with a FICOM-approved warranty provider as a pre-condition of registration. The minimum, mandatory warranty coverage on all residential construction in BC must include 2 years on labour and materials, 5 years on the building envelope, including water penetration, and 10 years on structure. There are five approved warranty providers in BC.

The Commission had anticipated that owner/builders would be required to register their status with Land Titles, thus avoiding enforcement problems because builders could not sell the property without adequate warranty coverage. The provincial government did not implement this requirement and, as a result, HPO has had significant difficulty policing the owner/builder category. Builders are circumventing registration by pretending to be owner/builders. The Commission understands the HPO is working on alternative approaches to the owner/builder

registration problem. ***The Commission urges the provincial government to re-examine its approach as both an effective and efficient solution is needed to the tendency of some builders to circumvent consumer protection, at the expense of others within the industry.***

It is important to note that at this stage, HPO accepts builders with the criterion that the builder has been accepted by a warranty company. There is no independent examination of past building practices or customer service. The Commission encourages the HPO to adjust its registration and licensing criteria to incorporate standards of quality.

4. Mandatory Warranty and Licensing for Building Envelope Repairs

The HPO needs to put in place licensing and warranty requirements for building envelope repair contractors. Following the distribution of a discussion paper in August 1999, the HPO is now proposing regulations related to this area, which include:

i) 5-year water penetration warranty on the building envelope and 2-year warranty on labour and materials;
ii) warranty acceptance of repair contractor prior to HPO licensing;
iii) building envelope consultant to be registered with HPO and must carry third-party liability insurance;
iv) building envelope repair defined as 60 percent or more of all the cladding replaced; and
v) warranty coverage cannot be less than 125 percent of the repair cost.

The Commission is concerned that the HPO definition of building envelope excludes roofs and garage parkades. Roofs were included in the original definition of building envelope advanced by the Commission. To exclude roofs suggests that water falling on the side of a building needs more protection than water falling on top of a building. Eliminating re-roofing from the definition will mean roof repairs will be performed to a standard that is lower than repairs to wall systems. The Commission is also concerned that the required warranty does not include a structural component.

Part II - Volume II Recommendation #8: That the mandatory repair warranty program include roofs in the definition of building envelope and that the repair program include 10-year warranty for structural repairs.

5. Research and Education

As noted earlier, the HPO has the important function of, and responsibility for, research and education. This is to provide resources and information regarding building science issues; cost-effective building techniques; best practices for retrofitting housing; Building Code changes; and current homeowner issues. The HPO has received over 17,000 calls on its toll-free number in the

past year, and 14,000 hits on its website.

Recommendation #5: That the mandate of the Education and Research function of the Homeowner Protection Office include the dissemination of information to the building industry.

Section 12 of the *Homeowner Protection Act* provides for this recommendation.

Based upon an AIBC contribution of $250 per architect, building licensing fees, and other contributions, the Provincial Advisory Committee (made up of a broad range of industry and government representatives) determines research and education priorities. The following is a brief summary of research initiatives undertaken, either directly, or with others.

Buying a New Home Guide
This brochure was updated in January 1999 to provide information and guidance to consumers wishing to purchase a new home. Designed to fill a gap in the literature for homebuyers, this brochure provides information on home warranties, residential builder licensing, hiring inspectors, and the role of lawyers and lenders in the transaction.

Managing Major Repairs
The HPO, in cooperation with the Ministry of municipal Affairs and CMHC, produced this 100-page guide which provides condominium owners with step-by-step detailed information on the process of repairing a leaking building. Topics include, assessing the problem and developing a solution, implementing repairs, financing options, and legal considerations.

Land Use Planning and Weather Protected Buildings
This document serves as a best-choices guide to encourage local government in reviewing their land-use bylaws and other policy or design related documents to encourage development of improved wall assemblies. This work is a product of recommendations from the first Commission regarding calculation of density (FSR) and includes a discussion of other factors, such as site coverage, height and setbacks, as well as design features (balconies, covered walkways, wall details, and overhangs).

High-Rise Envelope Details Study
It is generally agreed that performance problems experienced by high-rises are detail-related and envelope-system related. It is anticipated that this study will review details and systems that have performed well as compared to systems that have not performed well.

Building Code
On February 8, 2000, HPO held a one-day workshop on Building Code issues. It was attended by over 40 individuals representing 16 industry, government, and

professional organizations. Recommendations from this workshop will be fed into future code development and research initiatives.

Monitoring New and Remediated Wall Assemblies
The purpose of the monitoring program is to revise CMHC's protocol for monitoring buildings and adapt it to wood-fame, multi-unit developments in this climate. The intent is to monitor new wall construction, as well as remediated wall construction, that uses rain-screen technology. The information gathered through effective monitoring could be fed back into the development of the next edition of the Best Practices Guide.

Leak-Proofing Windows
The CMHC Survey of Building Envelope Failures found that a major contributor to moisture problems in buildings was water leakage occurring at the jamb sill connection of windows. The Leak Proofing Windows study will address various concerns, including manufacturing windows, transportation and storage, and installation techniques.

Envelope Drying Rates Analysis
This research project will provide data on the drying rates of walls under controlled laboratory conditions.

Builder's Tool Box
Although the Best Practices Guide is being used by builders and trades, a Builder's Tool Box is being developed which includes documents, bulletins, and visual aids on the best practices.

6. Alternative Dispute Resolution

Recommendation #69: That the Homeowner Protection Act make available an alternate dispute resolution mechanism (ADR) for issues arising from the problems surrounding residential construction—in particular, building envelope failures and that:

i) the system be optional for consumers but compulsory for the developer, builder, contractor, sub-contractor, professional, and warranty provider; and

ii) mediation be subject to private proceedings, while arbitration would be conducted under full disclosure rules.

A mandatory mediation process has been established for owners of homes covered under the new mandatory warranty system. This mandatory process has been established to compel warranty insurance providers to mediate with homeowners. One of the major problems with NHW, which the Commission heard time and time again from strata owners, was the claims determination process was controlled by NHW, often to the benefit of the builder.

BCREA continues to be concerned by the public misperception of unlicensed developer employees being "seen" by the public as licensed Realtors. BCREA does not have the same concern with the public perception of owners selling their own properties. Their signs and ads usually indicate "For Sale By Owner," which clearly alert the buying public that they are not dealing with a licensed professional who is subject to the provisions of the BC Real Estate Act. When wrongfully treated, the public has recourse to civil litigation. If dealing with a Realtor, they have additional recourse to the Real Estate Council under the BC Real Estate Act and to the Realtor's Real Estate Board for disciplinary procedures. The public is further protected by the Realtor's errors and omissions insurance. The public does not have these additional safeguards when dealing with unlicensed employees of a developer and often are unaware of this lack of protection.

- Dave Watt, BCREA
January 12, 2000

The Commission agrees with this recommendation from BCREA.

Part II - Volume II Recommendation #9: That the provincial government amend the Real Estate Act to require the conditional licensing of multi-family developer sales personnel.

ii) Disclosure Statements

Many presenters pointed to the fact that certain real estate disclosure documents did not protect them from being sold a "leaky condo." Accordingly, the Commission investigated the matter of public disclosure and the variety of disclosure statements used in relation to residential real estate transactions.

From the Superintendent's perspective, the key disclosure document is the requirement under Part II of the Real Estate Act, requiring developers to provide purchasers with a Disclosure Statement prior to the sale of sub-divided land, including strata lots.

Prior to the mid 1980s, all developers of sub-divided land were required to file a prospectus. This was changed to permit the filing of a Disclosure Statement (except in the case of a sale of time-shares located outside the province). This disclosure statement is intended to provide purchasers with material information relevant to the development. In the case of strata developments:

...because ownership or the use of property is shared, matters such as common property, by-laws, budgets, and information about overall development is information that purchasers of such developments should know. When considering the use of Disclosure Statements, it is important to consider when Disclosure Statements are used. Currently, for most residential developments in order to obtain sufficient financing, developers must have obtained a prescribed

number of pre-sales. A developer is permitted to market a development for six months prior to obtaining a building permit or financing. In the majority of cases most residential developments are marketed prior to the developer obtaining financing. Thus, for many purchasers, they are purchasing prior to the building permit being issued and prior to the receipt by the developer of confirmed financing.

- Robert Hobart, Superintendent of Real Estate
October 14, 1999

Consequently, the Disclosure Statement mandated by the *Real Estate Act* has not been of assistance in addressing the leaky condominium issue, since the document is prepared prior to the construction of the development and does not contain information relating to construction defects or building envelopes. Following consumer complaints, a summary statement is now required which contains information, easier for consumers to understand. The Superintendent's Office is currently in the process of creating a brochure required by developers to distribute with Disclosure and Summary Statements.

There is a disclosure document developed and distributed by BCREA, which is not mandatory under the Real Estate Act. Property Disclosure Statements (PDS) have been in place since 1992, but the form of PDS intended for use in the sale of strata properties is relatively new, having been introduced in November 1997. These forms were recently amended to include matters on third-party warranties and owner/builder declarations (but not entirely to the satisfaction of the Homeowner Protection Office).

Part II - Volume II Recommendation #10: that PDS be amended according to the HPO requirements, and that they become mandatory under the Real Estate Act. They should also include the requirement that a property cannot be sold unless both parties to the sale complete and sign the document.

iii) Licensing of Strata Managers and Strata Management Companies

The Commission's first report called for the registration and licensing of property managers by the HPO.

Recommendation #52: All property management firms for condominium buildings be registered immediately with the Homeowner Protection Office.

Recommendation #53: All property management firms for condominium buildings be licensed by the Homeowner Protection Office, pending discussion with the industry on the most appropriate form of education, training, and qualification.

In principle, recommendations #52 and #53 have been adopted, except the provincial government intends to license and regulate property management firms under the authority of FICOM and its

agency, the Real Estate Council. Apparently, the rationale behind this approach is that property managers, by virtue of their leasing activities as well as their collection of rents, are currently registered with the Real Estate Council. Many property managers also act as strata managers for condominium buildings. Therefore, it is suggested that licensing these managers under the HPO could be viewed as dual licensing.

The Commission has serious concerns regarding the regulation, training, and qualifications for property management firms being under the authority of the Real Estate Council and stresses the need for this regulatory role to be performed by the HPO and implemented expeditiously, given the importance of strata property management to homeowners. The Commission also has concerns about the perceived and real conflict of interest on the Real Estate Council, vis-à-vis their relationship to property management companies, which may be owned by a realty firm. It is necessary to avoid any situations where strata groups and consumer organizations feel there is a bias by a regulatory council.

Although the principle of the Commission's recommendations has been adopted, Regulations will not be forthcoming until at least mid-2000, at the earliest--two years after the Commission's first report. This recommendation should be implemented as quickly as possible.

> ***Recommendation #54: All strata councils be trained in the responsibilities of property management, if they choose not to employ the services of a management company. A log book be maintained to ensure the maintenance responsibilities are fulfilled on a continuous basis.***

It is important to note that recommendations #54 - #66 of the Commission's first report pertain to the new *Strata Property Act*, which has been proclaimed and will come into force on July 1, 2000. Some presenters during the most recent set of hearings expressed frustration and concern that the new Act and Regulations were taking so long to be implemented. Since the Act and the Regulations have not been implemented, the Commission urges the Policy and Legislation Branch, Attorney General's Department (which determines the content of the Acts that FICOM administers), adopt outstanding recommendations, as discussed in this report.

Recommendation #54 has not been adopted in the new *Strata Property Act*. The Commission, in its first set of hearings, heard testimony after testimony of the problems faced by volunteer strata members, untrained in the responsibilities they had assumed. Overlooking the need for strata member briefing and a minimum amount of training regarding the responsibilities of a strata member, is negligence.

> ***Recommendation #54 (revised): The HPO prepare a training manual outlining the nature and scope of strata members' role and responsibilities in the event the strata elects not to hire a property management company. This manual to be provided to all purchasers of strata properties as the time of sale.***

iv) The Condominium Act (Strata Property Act)

In its first report, the Commission made numerous recommendations to amend the Condominium Act. These recommendations provide the legislative framework for the creation of a strata lot and the structure and mechanisms for the ongoing operation of the strata corporation. The vast majority of these recommendations have been accepted and incorporated in a new *Strata Property Act*, approved by the Legislative Assembly in 1998, with amendments in 1999.

The Superintendent of Real Estate is responsible only for a limited approval process, including schedules on strata plans and by-law amendments made by a developer.

> *The various sections of the Act set out the mechanisms by which a strata corporation should operate and the mechanisms available to resolve disputes. Under the Act, it is up to the owners themselves, with the possible assistance of the courts or an arbitrator, to ensure compliance with the Act.*
>
> *Because issues that arise are personal matters among condominium owners, the Act does not include provision for the government to interfere in the problems that may occur. The Act is self-regulation and therefore does not contain mechanisms which permit the Superintendent or any other government office to become involved in the day-to-day operation of a strata corporation.*
>
> *- Robert Hobart, FICOM*
> *October 14, 1999*

The Act as it currently stands is not enforced by the Superintendent's Office, and any contractual disputes between purchasers and developers is left to arbitration or to the courts. Experience has shown with the leaky condo situation that these avenues are not satisfactory because of the lack of willingness among developers to resolve disputes and the uneven distribution of time and monetary resources between parties.

> *The Condominium Act and the proposed Strata Property Act are both self-regulating statues. For the most part there is no authority to make a ruling on any problem, other than placing the problem before arbitrators or judges. Repeatedly, I wondered why the government had a Residential Tenancy Office for landlord and tenant problems and disputes, but no Strata Corporation office.*
>
> *Tenants have nothing more than a damage deposit invested and unless they rent under a longer lease, they can give one month's notice and move, if and when they choose. They are not stuck. Condominium homeowners have their money invested in the strata lot and the only way out for them is if they can sell. Frequently, they've invested everything they have, or are mortgaged to their limit; then problems arise and they are stuck to live with them, or hang on even if it means going into foreclosure. Residential condominiums are owned by people from all walks of life...for many condominiums are the beginning homes, and the homes of the elderly--not the people with the strongest voice in our society.*

It could be beneficial if there was a Condominium Office with knowledge and authority to administer the Condominium Act, Regulations, and other related statutes, and oversee qualified arbitrators and mediators whose services would be made available to strata corporations and owners in a timely manner and at reasonable cost to the parties. Owners who chose could still have lawyers present their cases at their own expense. Fees for services should be sufficient to pay all costs and show something of a profit. It should not be a drain on our taxpayers.

- Enid C. Kirby
November 8, 1999

Part II - Volume II Recommendation #11: That the HPO establish a Condominium Homeowners Office to administer the Strata Property Act and provide services to condominium homeowners in an effort to redress the imbalance created in the market place between developers and consumers.

Recommendation #55: That amendments be made to the Condominium Act to ensure a complete set of records be transferred to the management company or strata council at its first meeting, to facilitate the effective maintenance of condominium structures. These records should include:

- ***i) any plans required to obtain a building permit;***
- ***ii) all documents indicating actual location of pipes, wires, and other infrastructure;***
- ***iii) the names and addresses of all major contractors and sub-contractors;***
- ***iv) all warranties, service manuals, and manufacturers' documentation relating to the common property and common assets; and***
- ***v) maintenance manual, renewal plans, and procedures specific to each multi-family building.***

The new *Strata Property Act*, which is not yet in force, requires that the documents referred to in items i) to iv) be turned over by the owner/developer to the strata corporation at the first AGM. A developer who fails to provide the documents must reimburse the strata corporation for its expenses in obtaining the documents on its own. The Condominium Homeowners Office would enforce these requirements.

Recommendation #56: That additional disclosure be provided to purchasers to assist in assessing the health of a strata complex including:

- ***i) any amount that the owner is obligated to pay in the future for a special levy;***
- ***ii) any approved expenditures still to be withdrawn from the contingency reserve fund;***
- ***iii) any outstanding notices or work orders against the strata***

corporation; and

iv) a building history and construction problems, if any.

The *Strata Property Act* requires that the information referred to in items i) to iii) be provided to prospective purchasers by means of an "Information Certificate." The Commission has been advised that disclosure of a building history and construction problems is not required because of the subjective nature of this type of information. The Commission does not concur with this reasoning, as engineer reports and strata minutes can chronicle problems and their redress.

Recommendation #57: That the Condominium Act be amended to clarify the strata corporation's responsibilities to make and keep records, and to make these documents available to owners in a timely fashion. Recordkeeping and access provisions should be moved from the by-laws to the body of the Act in order to reflect their importance. As well, all owners should be allowed to attend, as observers, all strata council meetings.

The new *Strata Property Act* incorporates this Recommendation. Record keeping and access provisions have been clarified and moved from the bylaws to the body of the Act. The new provision allowing owners to attend strata council meetings was placed in the bylaws in recognition that some flexibility may be desirable. For example, stratas should not be forced to rent premises for meetings. The Commission concurs with this reasoning.

Recommendation #58: That all property management companies, hired by developers, have an arm's-length relationship with the development company, and operate as an agent for the strata council.

To protect the interests of minority purchasers, the *Strata Property Act* provides that all non-arm's length contracts entered into by the owner/developer, after the conveyance of the first lot to a purchaser, must be approved by a unanimous vote. The *Strata Property Act* also provides for the automatic termination of strata management contracts entered into by the developer. The Commission concurs with this approach.

Recommendation #59: That the owner/developer act in the best interests of the strata corporation, including pursuing all warranty claims, and informing the strata corporation of its right to take legal action, if this duty is not met.

The *Strata Property Act* sets out a new statutory standard of care for owner/developers, which requires that they act in the best interests of the strata corporation. Although the duty to pursue any available warranty claims is undoubtedly implied by this statutory obligation, this has been clarified by inclusion of a specific duty to pursue warranty claims. The Commission concurs with this approach.

Recommendation #60: That any contracts entered into by the owner/ developer should terminate automatically at the time of the second annual general

meeting.

The *Strata Property Act* provides for the automatic termination of all strata management contracts at the second AGM. The purpose of this proposal is to prevent the owner/ developer from binding the strata corporation into a long-term contract that it did not negotiate. It may also assist in addressing concerns that a strata manager, chosen by the developer, may be reluctant to pursue all strata corporation remedies against the developer. The Commission concurs with this approach.

Recommendation #61: That the approach for establishing sufficient contingency reserves be reviewed with respect to the most appropriate method of ensuring adequate reserves.

The proposed Regulations to the *Strata Property Act* will increase the minimum annual contributions to the Contingency Reserve Fund (CRF) from 5 percent to 10 percent of the operating expenses for the current year. This change is intended to make it possible for strata corporations to more readily accumulate, or replenish, the funds required for repairs. To encourage strata corporations to budget for "ordinary" major repairs, the *Strata Property Act* gives strata corporations the express option of basing their CRF contributions on a depreciation report.

Recommendation #62: That owner/developers contribute a contingency reserve fund for the new strata corporation, with a minimum contribution of 5 percent of the estimated operating expenses, as set out in the interim budget.

The *Strata Property Act* requires owner/developers to establish a CRF for the strata corporation with a minimum contribution of 5 percent of the estimated operating expenses set out in the interim budget. This is to assist newly-established strata corporations in paying for future major repairs. The Commission concurs with this approach.

Recommendation #63: That the Condominium Act authorize and regulate the raising of money for special levies and clarify borrowing options.

The *Strata Property Act* both clarifies rules regarding the borrowing of money by strata corporations, and authorizes and regulates the practice of raising money through special levies. The new special levy provisions will provide a framework for all owners facing extraordinary circumstances (including leaky condos). As well, clarifying the legality of special levies will assist strata corporations in borrowing money by enabling them to use amounts still owing, under special levies, as security for loans.

Recommendation #64: That the Condominium Act be amended to require 75 percent of the votes cast to make a change in the strata councils by-laws, and that votes be limited to one per owner.

The *Strata Property Act* incorporates some of this recommendation by changing the rules on counting votes, so that abstentions are no longer counted as "no" votes. The second part of the recommendation is not included under the new *Strata Property Act*. The Commission finds it regrettable that there has not been a method established to restrict owner/developers from using their votes to defer necessary repairs. Condominium stratas are going to great lengths to get around the 75 percent rule. For example, the Marco Polo waited more than a year, then included their repairs as part of the operating budget. The repairs were approved easily under the rule of a 50 percent vote. The developer, Marco Polo Properties Ltd. took the strata to court and lost the judgment in August 1999. Stratas should not have to go to such lengths. The Policy and Legislation Branch should take steps to develop the intent of this recommendation, while not violating the need for Policy and Legislation to uphold the principle of one lot-one vote. The Commission is of the opinion that, for special levies relating to building envelope repair, the requirement should be reduced to a 50 percent threshold. These special levies could be subject to qualification as, a building envelope repair as determined by HPO. Therefore, recommendation #64 is revised as follows:

> ***Recommendation #64 (revised): That the Strata Property Act or Regulations be amended to allow special levies for building envelope repairs, as approved by the HPO, to require a simple majority.***

> ***Recommendations #65: That the Condominium Act, as it pertains to property lines, be amended so as to facilitate the most appropriate building envelope renovation system.***

This recommendation has not be adopted. The Commission understands that it requires an analysis on the Land Title Act, which has not yet been undertaken. The Commission recommends that this review be undertaken.

> ***Recommendation #66: That legislation be amended to allow developers to use purchaser's deposit funds for cash flow purposes, when such funds are protected by warranty coverage.***

This recommendation was not adopted primarily because the proposal has policy implications for the Real Estate Act. The Commission was concerned because, through mandatory warranty, purchaser's deposits are covered and, therefore, there is a double counting. However, the Commission concurs with the Policy and Legislation's rationale and withdraws this recommendation.

2. Warranty Insurance Providers

Until 1997, home warranties were not regulated as insurance contracts under the Insurance Act or the Financial Institutions Act. Following a review by both the Policy and Legislation Branch of the Ministry of Finance and Corporate Relations, and FICOM, a legal opinion determined that third-party companies offering home warranties could be seen as carrying on the business of

insurance. National Home Warranty and Residential Home Warranty were considered distributors of the warranty program and were each required to obtain a general insurance license.

Because of a previous court decision related to a non-profit corporation, New Home Warranty (NHW) was effectively exempt from the provisions of the Financial Institutions Act. Following the first Barrett Commission report and the establishment of the Homeowner Protection Act, non-profit companies were included under the definition of warranty providers and were to be regulated under the *Financial Institutions Act*.

The Commission was informed that there are currently five insurance companies authorized to carry on home warranty insurance business in BC. These are:

London Guarantee
Pembridge Insurance Company
Commonwealth Insurance Company
Kingsway General Insurance Company
Royal and Sun Alliance Insurance Company of Canada

These companies either market their products directly or through licensed insurance agents. For example, National Home Warranty is the insurance agent for Pembridge Insurance Company, whereas London Guarantee sells its warranty coverage directly.

Recommendation #39: Warranty providers to be regulated by the Homeowner Protection Office.

In general, the Commission is satisfied that useful procedures have been followed in the initial review and regulatory approval of insurance companies wanting to market home warranty insurance in the province. However, to avoid any future insolvencies the Commission recommends:

Part II - Volume II Recommendation #12: That FICOM--in co-operation with HPO--establish regulatory reviews on underwriting practices, claims handling, price determination, and other important criteria such as corporate guarantee requirements, together with the current financial criteria, to ensure the integrity of the warranty market.

The failure of NHW and the gap in the market created by this failure, demands prudent and careful, ongoing analysis and assessment.

The Commission understands why the decision was made to have warranty providers regulated by FICOM instead of HPO, as recommended in the first Barrett report. Warranty is considered to be an insurance product and falls within the jurisdiction of the Insurance Act. However, some accommodation must be made for the information exchange which would have been readily available to HPO, had they been made responsible for regulating warranty providers.

Warranty providers are regulated by FICOM from the perspective of ensuring adequate financial strength and approval of business plans. The Commission is concerned, particularly with the failure of NHW and the gap in the market this failure has created. The concern is that financial solvency may not be sufficient to ensure the integrity of the warranty market. Underwriting practices, claims handling, and other important criteria are not being reviewed and/or approved.

> ***Recommendation #40: Warranty providers be required to obtain a minimum amount of bonding and comprehensive general liability coverage for the developer, general contractor, and sub-trades.***

This recommendation was not adopted. It was decided that warranty providers will decide what form of security they require of builders. The Commission is still concerned that minimum standards be set in underwriting that ensure quality decision making in the industry. What could become poor practices, can drive out good warranty providers.

> ***Recommendation #41: Warranty coverage to be offered in a competitive market by private, third-party warranty providers. Minimum levels of coverage, claims settling procedures, and dispute resolution approaches to be defined by the Act.***

The *Homeowner Protection Act* and Regulations prescribe minimum coverage level, claims handling, and dispute resolution procedures. Until there is some claims history under the new system, it may be difficult to determine whether these minimum standards are sufficient or need to be upgraded.

> ***Recommendation #42: Minimum coverage levels to include 2 years for workmanship and materials, 5 years for building envelope, including water ingress, and 10 years for structural faults.***

This recommendation was adopted and implemented as set out in the *HPA*, Section 22 and in the Regulations.

> ***Recommendation #43: The BC Homebuilder's Association must immediately divest itself of its interest in New Home Warranty.***

This recommendation was not adopted, although the Commission understands that NHW was taking some steps to review this issue prior to its failure in March 1999. The Commission is of the view that the non-arm's-length relationship between CHBA-BC and NHW played an important role in its failure, as was discussed in Chapter TWO.

> ***Recommendation #44: No developer, builder, contractor, sub-contractor, or sub-trade can invest in a warranty provider. This is to ensure an arms-length relationship between the industry and the warranty providers.***

There is nothing in the legislation to prevent ownership at any level. The only exception is Section 160 (3) of the *Financial Institutions Act*, which deals with applications for business authorizations from out-of-province companies. Under this section, the Minister may make rules if shareholdings exceed 10 percent. However, under the new regulatory environment, and as a result of Sections 144-156 of the *Financial Institutions Act*, which deals with related party transactions, the spirit of this recommendation has been captured.

> ***Recommendation #45: The warranty program should commence on the units, when purchased, but the time limit for minimum coverages not commence until the first meeting of the strata council.***

The Commission's recommendation has not been implemented and the Commission is still of the opinion that consumers should have this protection. The HPO Regulations specify commencement of the plan under Schedule 3, Section 8. Parts 4, 5, and 6.

III. Municipalities

1. Role of Municipal Building Inspectors

> *The Building Code is intended to ensure that health and safety standards for buildings are met, not to guarantee overall construction quality--local governments enforce the standard established in the Building Code--it is unreasonable to assume (given the complexity of a modern building and the volume of new construction in some areas) that an inspector can ensure the quality of every aspect of every structure.*
>
> *Buying a Home: A Consumer Protection Guide*
> *Ministry of Municipal Affairs 1997*

The Commission has accepted the view that it is not the municipality's role to ensure the quality of construction; that responsibility resides with the developer/builder. The developer/builder, in turn contracts that responsibility to the professional architect or engineer. The municipal inspection process is an audit function--albeit an important one--in the sense that a limited number of field inspections are undertaken (formwork, sheathing, framing, insulation, and final). For a building which takes over a year to complete, this could mean an average of five site visits over approximately 3-5 days. Moreover, the design of the building and its building envelope, and ensuring that field reviews take place during construction, is the role of the registered professional (architect and/or engineer). The role of the building official is to monitor these developments.

> ***Recommendation #17: That municipalities should be explicit and give a written statement to all homeowners who inquire, to ensure the exact function (and responsibilities) of their building officials are understood.***

Although there are exceptions, most municipalities do not fully explain the role and function of their building inspectors to consumers.

The role of the municipality in providing inspection services has been defined and redefined on several occasions by the courts. Accordingly, statements as to the role of the municipality provide more of a disclaimer than a clarification of service levels. Given the impact of providing such a statement on future litigation, any such document is normally reviewed by the City solicitor prior to its use. As can be expected, the final product after vetting by the solicitor would be relatively meaningless in the context of your recommendation.

- City of Nanaimo
October 15, 1999

The Commission is still concerned with the lack of understanding on behalf of consumers as to the role and function of municipal inspectors. Consumers expect more than an audit function. On the other hand, municipalities, concerned about liability, are unwilling to provide anything other than an audit function. As a result, the enforcement of the Building Code is lacking.

Recommendation #18: That the Municipal Act be modified to remove the joint and several liability of a municipality while retaining proportionate liability.

Recommendation #19: That the Vancouver Charter be amended to be compatible with the proportionate liability held by other municipalities.

With the liability issue of "joint and several" hanging over municipalities and regional districts, there is a growing trend by these authorities to reduce their plan review and inspection process. In some jurisdictions, contracting out is being seriously considered and in fact, several have implemented partial and even full reduction in the level of service in order to reduce or eliminate liability, simply based on economic decisions.

- Building Officials Association of British Columbia
December 6, 1999

The Commission recognizes a problem with the current situation as municipalities, motivated by valid liability concerns, are not being accountable with respect to their obligation under the *Municipal Act*, which is to enforce the Building Code.

I'm of the firm opinion that the Code is misinterpreted and that the municipalities are not doing their due diligence to the public in administering the Code.

- Pierre Gallant, Engineer
November 1, 1999

Given the extensive number of code violations related to multi-family residential construction presented to the Commission, it is vitally important that municipal officials play a much more significant role in administering and enforcing the Code--this means a greater knowledge base for some officials when interpreting the Code. Such a knowledge base would be co-ordinated through a reinstatement of the Building Standards Branch under the HPO. The connection between some developers, making inappropriate choices for building design, municipal concerns

over liability, and the need for education and training as well as enforcement strength, was addressed by Mr. Tim O'Meara, Chief Building Inspector of the city of New Westminster, on October 26, 1999.

> ***Ms. Allan:*** *...was the knowledge available five years ago if people involved in building homes wanted to seek it out, to build homes that didn't leak and rot?*
> ***Mr. O'Meara:*** *...its the way the industry has developed over the years, and that for the last 10, 15 years, developers are setting up shell companies, and they're calling the shots....For instance...we were concerned about a particular design that they were using....We wrote to them, and asked them to change it, and they refused...*
> ***Ms. Allan:*** *And was there no authority you had to pull their permit?*
> ***Mr. O'Meara:*** *I don't see how I could pull the permit....I could only make a recommendation and that's what I did.*
> ***Ms. Allan:*** *With respect to certain projects, and I know you mentioned that if the liability feature of the municipality was taken away, that inspections would be increased. Is that what you're saying.*
> ***Mr. O'Meara:*** *Yes.*
> ***Ms. Allan:*** *And the result of those inspections would be to ensure fewer building code violations?*
> ***Mr. O'Meara:*** *That's correct....First and foremost is that the Building Standards Branch has to be reinstated with a clear mandate to look at the industry at large.*

Regarding municipal liability for failure to enforce the BCBC, the Commission is of the view that fear of litigation is effectively leading to an inability of building officials to perform their function. The Commission strongly believes that its recommendation concerning municipal liability should be accepted and enacted. That would ensure that municipalities, including Vancouver, would be liable for matters that were their fault but they would not wind up paying large judgments when their degree of responsibility was minimal. On the other hand, the Commission also encourages municipalities to take some responsibility, along with the HPO and the reinstated Building Standards Branch to try to prevent shoddy construction within their boundaries.

It is recognized that the Building Officials Association of British Columbia (BOABC) have, together with AIBC, APEGBC, and the Plumbing Officials Association of BC (POABC), created a joint Building Code Interpretation Committee with invited observers of the Building Policy Branch, HPO and Fire Commissioner's Office. It is important that there be a permanent structure in place, for training and education, and interpretation of the Building Code. That structure is a Building Standards Branch located within the HPO and supported by the Provincial Advisory Council.

As mentioned in the first Commission's report, placing the Building Standards Branch within the HPO would eliminate any concern of potential and inevitable conflict by having two different government administrative services (HPO and Building Standards Branch) with the authority to change and assist in the interpretation of the Code.

Recommendation #20: That municipal councils review their building permit process with a view to enhancing the inspection of work, related to an effective building envelope, and that inspectors become more conversant with the role and effectiveness of building science issues related to the building envelope. The Union of BC Municipalities and the Homeowners Protection Office to provide directives in this regard.

There appears to be an effort to downgrade the role and importance of the municipal inspector rather than improve it. The suggested adjustments regarding liability should go a long way in reversing the current trend.

B. Municipal By-laws and Codes

Chapter THREE on the Building Code noted that the British Columbia Building Code (BCBC) is applied throughout the province, although Vancouver has its own Code, based on the BCBC. In addition, most local governments supplement the mandatory provincial code through their own by-laws; consequently there is considerable variation among municipalities.

Recommendation #10: That all municipalities review their zoning by-laws, and the calculation of FSR, with a view to promoting sound building envelope design practices. In particular the following revisions should be reviewed:

- ***i) FSR calculations to be taken only to the inside face of the principle structural elements of the exterior walls necessary to support the building and the walls;***
- ***ii) exclude from FSR, walkways and top floor balconies protected by roofs; and***
- ***iii) ways and means for promoting overhangs which does not conflict with other municipal planning objectives.***

Many municipalities are reviewing their zoning by-laws and calculation of FSR. The following is a compendium of actions taken, as presented to the Commission during the recent hearings.

The Surrey Zoning By-law currently requires that the FSR calculation be based on the exterior dimensions of buildings. Roof eaves, exterior roofed walkways, and exterior balcony projections are excluded from these calculations.

I have been informed that staff are currently working on amendments to the Surrey Zoning By-law focused on encouraging builders to incorporate improved building envelope designs for the exterior walls. It is expected that the Zoning By-law amendment proposals will be available for Council's consideration shortly. The specific recommendations numbered (i) to (iii) above [the Commission's recommendation] will be addressed as part of this review.

- Mayor D. W. McCallum, City of Surrey
November 15, 1999

i) In Richmond the calculation is applied to the exterior dimension of the foundation wall. As such, any exterior wall component which extends beyond the foundation is not included, this applies to the typical "rain screen design" and also to a conventional designed exterior finished cladding.
ii) An overhang that is not supported by structural members on the exterior side of the overhang, away from the building are not considered in the calculation. With regard to exterior walkways, I previously wrote to the Honourable Jenny Kwan on July 20, 1998, as follows:

> *There is a concern, however, about the recommendation that covered walkways not be included in the FSR calculation. It is the City's experience that developers potentially will take an exemption such as this, as a base for all future building designs. This inclusion of exterior walkways in a building design has in the past not been successfully addressed by architects and builders, and this has resulted in a design feature having a history of water penetration problems.*

iii) Roof overhangs are excluded as part of the FSR calculation.

- Mayor Greg Halsey-Brandt, City of Richmond
October 25, 1999

The Commission concurs with Mayor Halsey-Brandt's reasoning, having initially come to the same conclusions regarding the practice of some municipalities in dealing with exterior walkways and covered balconies in the calculation of FSR. The recommendation should be revised to read: ***ii) include in FSR, exterior walkways and balconies protected by roofs.***

> *We have reviewed various scenarios for allowing overhangs on buildings, one of which falls outside our control. Where a building is built with its front face to the street side property line, even where our Engineering Department would be willing to grant an easement for a projection over the street (as it does on certain commercial buildings), the Strata Titles Act would disallow the projection, as the common property of a strata titled building can not project across any property line. We would recommend that this provision be revisited.*
>
> *- Douglas Watts, City of Vancouver Building Envelope Specialist*
> *November 16, 1999*

Part II - Volume II Recommendation #13: That the provincial government re-examine provisions in the Strata Titles Act which disallows common property extending across a property line.

The City of Vancouver has taken a leadership role on Building Envelope matters related to multi-unit residential construction. They have implemented mandatory rain-screen walls in their Building By-Law for new construction and repairs. While the Commission is not in agreement with their specific initiative for reasons outlined in Chapter THREE, their efforts should be acknowledged and commended for attempting to bring greater accountability into the building industry.

The HPO has informed the Commission that the publication, "The Best Choices Guide on Land Use Planning and Weather Protected Buildings," (May 1999)--a land use guide which explains the relationship between planning and zoning and how that impacts on good design--had been widely distributed and a number of municipalities are beginning to implement these guidelines.

Recommendation #21: That municipalities waive building and permit fees on repairs related to building envelope.

Quite a number of municipalities in the lower mainland and Victoria have waived building permit fees on reconstruction projects.

Chapter SIX

Health Issues

> *I actually had severe sinus involvement and severe head pain. It feels like you have a boil or an abscess in your head. My nailbeds in my feet were affected by fungus. I had lesions on my feet, the soles of my feet. I had abscessed gums in my mouth, and in the bone....and upper respiratory infections for two winters, which put me in bed for several weeks, with chest involvement. And that was severe bronchitis, almost pneumonia.*
>
> *- Sandra Roth, Condo Owner*
> *December 9,1999*

> *...when people start doing the remediation work within their homes, this is where you can potentially release a large amount of fungal spores, which are basically abnormal agents which can interact with your lung tissues and cause an allergic reaction.*
>
> *- Dr. Chris Van Netten, Toxicologist*
> *December 7, 1999*

Faced with costly and complicated repair options, most strata councils struggle with remediation choices. Owners of leaky condo units must wait for repair work schedules and strategies to be adopted by their neighbours--many of whom may live in perfectly dry and safe units elsewhere in the complex. It is clear that a delay in remediation work only increases the opportunities for toxigenic moulds to grow. The Commission has heard frightening stories of personal health consequences from residents whose exposure to these moulds has seriously and permanently impacted their own health or that of their family members.

It is important to note that most people seem quite tolerant of exposure to typical mould growth, and can even withstand exposure to higher levels of fungal growth for modest periods of time. However, the evidence presented to the Commission suggests that exposure to some moulds represents a serious risk for all people, especially "at risk" categories such as the very young, old, or those with immuno-compromised health status. These people should avoid exposure to prevalent toxigenic moulds.

Health issues related to mould and leaky condominiums are only now coming into focus--too late for many individuals, such as Ms. Sandra Roth, quoted above. In a paper presented to Vancouver's building industry community by Mr. M.D. Lawton of Morrison Hershfield in early 1999, evidence was tabled detailing the severity and frequency of dangerous moulds found in leaky condominium buildings.

> *Because of our past experience with mould research, we were well aware that the same conditions that lead to wood rot would very likely lead to the growth of toxigenic moulds. We established a policy of collecting samples of mould growth*

found in test openings. The results have not been comforting. Toxigenic species including Stachybotrys chartarum (atra), Aspergillus versicolor, and Trichoderma harzianum have been identified in a high proportion of the bulk samples we have collected since instituting the policy.

Health Canada has taken a leadership role in protecting some Canadians from exposure to toxigenic moulds in British Columbia, but this assistance has been limited to some first nations reserves on Vancouver Island. It is clear that concern for the health of residents and workers repairing leaky condominiums, is an urgent and compelling public health issue that deserves immediate and comprehensive action by Canada's health and safety community.

As practitioners we are in need of rational guidance on evaluating degree of concern and the appropriate methods of addressing the real risks. This needs better risk evaluation and research on the effectiveness of alternate methods of isolating and cleaning up toxigenic moulds.

- Mr. M.D. Lawton, Morrison Hershfield, 1999.

A. Dealing with Mould

Tenants and homeowners are generally familiar with modest problems arising from damp or humid conditions that spawn the growth of moulds or fungus. In a publication entitled "Indoor Air Quality," the B.C. Ministry of Health provides the public with advice on dealing with moulds and other biological contaminants. The following tips for controlling mould growth need to be set against the very abnormal circumstance of life inside a leaky condominium:

i) Repair all internal and external leaks promptly and permanently.
ii) Clean and disinfect all smooth surfaces where mould is present using a solution of 1 part household bleach to 10 parts water.
iii) Clean and dry water damaged carpets, underlay and building materials within 24 hours or consider removing them.
iv) Throw out contaminated porous materials such as mouldy ceiling tiles, mildewed carpets, drywall, etc.
v) Stop stagnant water collecting around heating ventilation and air conditioning system parts.

This Ministry document is currently being used by municipal health officers, to advise concerned condominium owners. While this advice might seem helpful in normal circumstances, it seems woefully out of place when set against the real life experiences of many condo owners:

And when I moved in, it was just a couple of weeks later that water was pouring down my front hall, and I've had, like, seven major leaks into my new town house. Water was coming down the front hall, which is a very high ceiling, and it was not just a trickle, it was pouring down. That was one of them. And then up on the landing of the stairwell, which turns, I've had about seven huge water marks

there, with a buckled wall. And into my bathroom, over the course of time, they had to cut away my ceiling, and remove part of the ceiling because water was dripping into a bucket through the bathroom. There was water coming in my kitchen around the stove, which I reported on the one-year inspection, and was told just to forget about it.

- Sandra Roth, Condo Owner
December 9, 1999

If dealing with mould can be considered a challenge for condominium owners and their strata councils, the same can be said for the construction industry, the remediation companies, construction workers and indeed, for governments at all levels. Part of this challenge stems from the intensely detailed scientific understanding required to correlate the presence of moulds with human health and the fact that most research conducted in this area is less than a decade old.

In June 1995, the Environmental Health Directorate of Health Canada published "Fungal Contamination in Public Buildings: A Guide to Recognition and Management." This report was the result of work conducted by a federal-provincial task force. The impetus for this study came from the provincial government in Prince Edward Island, (there were 11 members of this task force--4 representing Health Canada; none from British Columbia).

This groundbreaking Canadian report was the first to consider fungal growth in public buildings, assess health risks; and suggest possible management strategies. Although the focus of their study lay in the issues around public buildings, the work directed their investigations to water-damaged buildings--clearly relevant for condominiums.

In this protocol, special attention has been placed on the toxigenic fungus Stachybotrys chartarum (atra), which is frequently isolated from water-damaged buildings in Canada. It is recognized that fungi can cause a spectrum of illnesses in humans, ranging from rhinitis to invasive diseases. If associated with fungal contamination of buildings, relatively well defined diseases are considered "building-related illnesses". The extent of the human health related illnesses linked to fungal growth is nothing short of alarming. The list compiled in this study reads:

Other adverse human health effects from mycotoxin inhalation, documented in uncontrolled case reports, include renal failure, tremorgenic encephalopathy, and organic dust toxic syndrome. Living in a damp and mouldy home has been associated with non-specific complaints such as headache, sore throat, alopecia, flu symptoms, diarrhea, fatigue, dermatitis, malaise, cough, rhinitis epistaxis, and fever.

Epidemiological studies from several countries have demonstrated associations between questionnaire-reported mould growth in the home. This finding has been remarkably consistent across different climates, societies, housing characteristics and scientific investigators.

In the few years since the Federal Government commissioned this seminal work, there has been further research and evidence that Health Canada takes the findings to be real and not simply alarmist.

It is very important to note that Health Canada's concern extended beyond the health of the residents and addressed the health of those working on repairs. Not surprisingly, the risks of exposure increases dramatically when walls are removed--disturbing the mould and releasing the spores. In preparation for repairs conducted by the Federal Government on these homes, the First Nations Environmental Health Services branch of Health Canada issued "Recommended Interim Health & Safety Guidelines for Protection of Workers During Mould Remediation and Clean-up in Residential Homes."

In a prelude to the safety protocols recommended by these guidelines, there are certain "basic requirements" that serve as a signpost for construction workers involved in these projects:

> *"No worker who has any sort of immune suppression, asthma or mould allergy should work at mould clean-up, as the risk of serious reactions in the event of inadvertent exposure is too great. Any worker who has recently had a severe cold or flu should delay working in mouldy areas until fully recovered."*

Dealing with mould in leaky condominiums is a matter of urgent necessity, requiring great care to protect the health of workers and residents.

B. Evidence Of Health Consequences for Condo Owners

The Commission has heard from a small number of condominium owners whose health has suffered while living in a leaky condo. Indeed, the Commission has heard testimony from the very "at risk" individuals that scientists have suggested are most vulnerable. These are the very old, immune suppressed, and from parents with infants suffering serious and possibly permanent health consequences from exposure to mould.

The Commission has also reviewed media coverage of the "leaky condo epidemic" capturing the mould-related health issue. The science underlying these stories could not be more straight forward. Damp--not just wet--environments act as breeding grounds for mould. With thousands of leaking condominiums in British Columbia, the severity and frequency of this infestation could not be more certain.

It concerns the Commission that prudent and prompt action is not being taken by some strata councils to address mould-related repairs. We have heard a variety of explanations:

1. Lack of Awareness

Even visible mould can be of a type and quantity to present no particular danger to residents. This does not mean the mould should be ignored--but helps explain the complacency of strata councils to a problem that is of greatest concern to only a fraction of the population. This

problem stems from mould that is usually hidden from view (between wall cavities), and is, ironically, of greatest potency once repairs are underway.

2. Collapse of New Home Warranty

The cost of repair work to strata councils has escalated dramatically for the vast majority of leaking condominiums--those whose warranty protection from New Home Warranty has proven to be of marginal value. Strata Councils that are now facing the full brunt of repair costs have found themselves struggling to assemble the necessary resources.

3. Cadillac versus Band-Aid Repairs

As strata councils research the repair options, they typically receive a very wide range of solutions--detractors calling minimalist options "band-aid," and most costly options "cadillac." While every circumstance is different, it is clearly the case that more minimalist repairs tend to leave as much of the existing structure in place as possible and, indeed, much of the hidden mould stays hidden. While the Commission is not sufficiently informed to know how or whether such "solutions" pose health risks to occupants, the possibility clearly exists.

4. Bad Publicity

The Commission has heard and seen evidence that suggests that some condo owners come under pressure from their neighbours to keep quiet on the matter of mould problems. Just as one might have been told many years ago not to "air your dirty laundry," condo owners may be encouraged to bury bad news that would diminish the property values of other condo owners.

One source of evidence which suggests this inclination to keep matters quiet comes from correspondence with municipal Environmental Health Services. The Commission wrote to a number of such Services in the Lower Mainland. In a response from Simon Fraser Health, a breakdown was provided on the number of Indoor Air Quality concerns that had been registered over a two-year period. Of the 178, only 11 related to leaky condos. *"It should be noted that the large majority of IAQ complaints received were from tenants of rental housing units rather than from home or condominium owners."*

C. CMHC's Role

The Commission has taken particular interest in Canada Mortgage and Housing Corporation's involvement in issues related to mould. For more than twenty years, CMHC has positioned itself as an expert on the subject, and has produced numerous publications and continues to fund research on aspects of remediation in buildings where mould is certain to be present. In addition to this educational and research role, CMHC's link to other aspects of this issue are:

i) as a builder of multi-family structures in the Lower Mainland that have suffered building envelope failure;
ii) as the mortgage guarantor enabling condo-owners to purchase units with only 5% down payment;

iii) as the mortgage holder on social housing co-operatives in the Lower Mainland including buildings that have suffered building envelope failure; and
iv) as the builder of housing stock on Vancouver Island Reserves that required extensive mould-related repairs;

Clearly, CMHC has been part of the solution and part of the problem.

Jim White, Senior Adviser, Building Science, CMHC, presented a paper entitled *"Moldy Houses Can Be Deadly"* to the 1997 ASCP Convention and Exhibition.

CMHC has been studying moisture and mold problems in houses for about 18 years now. Initially we were not sure of a health connection. Our work with Health Canada has removed our doubt of a connection. Our work with Agriculture Canada with one of the leading experts on toxic molds has removed doubts about why.

Mr. White detailed CMHC's concern with mould by noting research that has determined a 50 - 100 percent increase in respiratory disease among populations living in homes reporting moisture or mould. As per the precautions taken during remediation work on Vancouver Island Reserves in 1998, Mr. White notes that workers who are ill or immune deficient when exposed to mould can become permanently disabled.

Given this leadership role in researching and communicating mould-related issues in Canada, it is reasonable to expect that CMHC would have, and should have, played a visible and constructive role in helping British Columbians deal with mould-infested leaky condominiums.

One of the hotly-contested facts debated before the Commission has been the date at which various players in the construction sector knew of the leaky condo problem; what they did with that knowledge; and what actions, if any, were taken.

On December 2, 1999, CMHC hosted a major seminar workshop in Vancouver entitled "*Advanced Construction Details, A one-day, hands-on event with the foremost building envelope experts with a focus on Multi-Unit Wood Frame Construction and Repair.*" An answer to the question of when CMHC was aware of the leaky condominium crisis was given to the delegates attending this event by Mark Salerno, CMHC Senior Consultant, Research & Technology Transfer. Mr. Salerno was the first presenter at this conference. His presentation was entitled, *"CMHC Research Leaky Condos, Emerging Crisis."* In 1993, CMHC completed construction of an assisted housing initiative--Kitsilano Project. In 1995, remediation work was started--the wooden studs having already rotted. Mr. Salerno acknowledges that, by this point in 1995, there was an "emerging crisis."

Although it had been two years since the Vancouver Sun had published Ben Parfitt's 1993 series *"Rotten to the Core,"* CMHC discovered the emerging crisis when its own building experienced envelope failure within two years of construction. At that point, once the crisis had been acknowledged, CMHC formed in British Columbia the Building Envelope Research Consortium. But while CMHC earns credit for initiating this valued contribution to restoring confidence in the

building community, it must be noted that a different story was played out for ordinary condominium owners.

By 1995, Vancouver was awash in leaking condominiums--under repair, awaiting repair, covered in tarps. Three years later, CMHC was still routinely approving the 5 percent down mortgage guarantees from couples such as Dawn and Michael Schumacher. In a series published by the Vancouver Province in May 1998, staff reporter Clare Ogilvie interviewed the young couple.

> *The Schumachers took advantage of CMHC's five per cent down offer to buy their Burnaby condo three years ago. Shortly after moving in, they began to suffer cold-like symptoms--coughing, sneezing and ticklish throats. The culprit was the mould stachybotrys atra, growing in the walls of their leaky home.*

The extent of the "emerging crisis" could not have been more clear once CMHC completed and published the survey, "Building Envelope Failures in the Coastal Climate of BC in 1995." Marc Salerno was asked, in 1999, by one condo owner to detail the CMHC's response to the leaky condo crisis. In Appendix One of his October 26th reply to Carmen Maretic he states:

> *Although CMHC had undertaken research on moisture problems in Canadian housing prior to that time (1995), it was the results of this specific study which stated the reasons for the problem, and gave clear recommendations on what action steps should be taken. For example, until this study was completed it was not known that almost all of the problems related to moisture problems in BC were due to water entering from outside the building and not from the diffusion of moisture from inside the home.*

With full appreciation of the extent of the "emerging crisis," it is reasonable to expect that CMHC would do more than conduct business as usual. In fact, for consumers, that was exactly how CMHC responded. As it had for many years, CMHC went about its business, publishing pamphlets, booklets and videos on various aspects of home ownership:

> Removing Ice on Roofs, about Your Home Series CE15 1999
> Floods - What to do Before and After: Self Help Advice 1997
> Fighting Mold. About Your House Series CE8 1996
> After the Flood. A bout Your House Series CE7 1996
> Measuring Humidity in Your Home: Do you have a humidity problem? 1996

CMHC's Senior Consultant, Research and Technology Transfer, describes CMHC's view of the building envelope failures in British Columbia as being, in 1995, **"an emerging crisis."** CMHC Senior Adviser, Building Science delivers a paper to an international conference titled, *"Moldy Houses Can Be Deadly."* It seems more than reasonable to suggest that once CMHC started using terms like **"crisis"** and **"deadly"** to describe a circumstance faced by thousands of Canadians living in leaky condominiums--homes that were typically purchased with CMHC approved high-ratio mortgages--it was time for something other than a business-as-usual response.

Dr. Chris Van Netten, a professor of toxicology at UBC--and a member of the Mould Advisory Committee that studied and recommended procedures followed in the repairs to homes on native reserves on Vancouver Island in 1998--appeared before the Commission on December 7th.

> ***Ms.Allan:*** *Now, if repairs are being undertaken in a multifamily residential building, what -- what would you recommend to homeowners?*
> ***Dr. Van Netten:*** *I would depending on the extent of the repairs. You can do it by -- room by room, for instance, which means people can literally move out of one room and go somewhere else. If the whole structure is an open type of structure, I would really suggest they literally move out, especially when the renovations are occurring on the inside of the building. On the outside of the building, you have to sort of use your own judgment in respect to how much interaction there is between the air on the outside compared to what you do on the inside. If your windows are open and people are working on the outside, you have a problem. But if you can close them, then you can probably stay inside without having to worry much about it. But if there is definitely work going on inside the building, where the Gyproc walls are being taken out, etc., I would suggest you move out of there.*
> ***Ms. Allan:*** *That you move out of your home?*
> ***Dr. Van Netten:*** *Move out of the home.*

CMHC is familiar with the work of Dr. Van Netten, and endorsed the recommendations of the Mould Advisory Committee on which he served vis-à-vis the first nations' housing repairs, where at-risk populations were moved during repair work.

It is the opinion of the Commission that CMHC has informed itself of the health risks associated with mould in leaky buildings in British Columbia and is aware of the extreme caution required in the management of toxigenic moulds. What has been missing from CMHC is a credible response to the self-described "emerging crisis" for condo owners in British Columbia.

D. Health Canada's Role

The Commission appreciates the assistance from Health Canada's Vancouver based staff. In particular, we appreciate the significant original research compiled by Dr. David Martin, Programs Medical Officer, Aboriginal Health, which was supplied to the Commission.

Assistance from Health Canada's head office has been less forthcoming. Efforts to schedule an appearance by someone representing this federal department failed. Letters were sent. Phone calls were made.

There is little doubt that Health Canada has a role in issues relating to indoor air quality. From the Department's website we learn:

> Because *of the potentially adverse effects to human health resulting from*

exposure to pollutants in the home, the "Exposure Guidelines for Residential Indoor Air Quality" were developed.

In Canada, no single agency or organization has sole responsibility for investigating and controlling the potential health impact of residential indoor air pollutants. Moreover, in the case of residential buildings, involvement by government may, on one hand, be viewed as an intrusion, and on the other, as a necessity. There are a number of national agencies in Canada that have a role to play in this regard. These include:

* *Health Canada*
* *Environment Canada*
* *Public Works and Government Services Canada*
* *Natural Resources Canada*
* *Agriculture and Agri-Foods Canada*
* *Canada Mortgage and Housing Corporation*
* *National Research Council of Canada, Division of Building Research*
* *Housing and Urban Development Association of Canada*
* *Canadian General Standards Branch.*

Health Canada has been unwilling or unable to clarify what, if any, actions it has taken to address the obvious health-related concerns arising from British Columbia's leaky condo crisis. Health Canada played a very significant role in the crisis surrounding urea formaldehyde foam insulation in 1980. Like others, the Commission has heard suggestions from Health Canada about the importance of taking a more pro-active health promotion posture. If Health Canada had taken any action in regard to the plight of leaky condo owners, we would have heard about it. It is a matter of regret to this Commission that Health Canada did not take the opportunity to assist this Commission and, through that, help consumers.

E. WCB Role

Just as residents are most exposed to the health risks associated with fungal growth during periods of remediation, the risks to construction workers are also of great concern. The Commission has heard from the Workers Compensation Board, the Carpenter's Union, and other representatives of the labour movement in British Columbia.

Kent Hillman appeared before the Commission on behalf of WCB. Although it is WCB's belief that existing regulations provide sufficient protection for workers in the near term, the Board agrees that more information is needed.

What we're finding is that , like the rest of the world, we're trying to learn about this stuff, and we have some generic practices here that do protect people in the practical sense, and we do have a research project that

we've recently approved. It's a joint research project with UBC (Dr. Van Netten), and the Carpenters Union, local 1995. And that's going to be a very interesting project because it's really going to go out into building exposures and symptoms, and do a lot of air sampling and that kind of thing. That, hopefully, will bring us back some better information on the BC environment related to mould and fungus contamination and the health risks to workers.

As noted by Mr. Hillman, one of the sponsors of research on this issue has been the Carpenters Union. Bill Duncan appeared before the Commission on behalf of this union and it should be noted he also serves on a number of industry/government committees addressing aspects of the leaky condo crisis.

Mr. Duncan makes a compelling argument that sufficient evidence of risk associated with mould-related repairs justifies an abundance of caution. Although the union is to be commended for initiating its own training programs for its membership on health and safety aspects of working on repairs to leaky condominiums, the Commission would like to see the Workers Compensation Board step up their own response by increasing the frequency of visits by WCB staff to condominium repair sites.

Part II - Volume II Recommendation #14: The Workers' Compensation Board increase the frequency of site visits by WCB staff to condominium repair sites.

Assessment of on-site risk is an important element in worker protection. To support hazard assessment of biological contaminants, the Commission recommends some amendments to the relevant regulations.

Part II - Volume II Recommendation #15: That WCB regulations governing hazard assessment of biological contaminates and work procedures be amended in Book 2, Part 9 of the Occupational Health and Safety Regulation Book - BC Regulation 296/97. The revised guidelines would read:

Hazard Assessment of Biological Contaminants and Work Procedures for Building Envelope Restorations:

9.9 (1) (a) A hazard assessment of biological contaminants must be conducted for each building envelope restoration or each group of living units located within a building envelope restoration, and;
(b) Work activity or group of work activities that present similar hazards to be performed inside or outside the affected housing units of a building envelope restoration project.

9.9 (2) The hazard assessment of biological contaminates required by Subsection (1) must consider
(a) the conditions which may exist prior to entry caused by the design, location or use of the dwelling, or which may develop during work activity inside or outside the dwelling, and
(b) the potential for toxic microbial substances or other hazardous atmospheric particulate and related harmful substances which may put a restoration worker, technical consultant, or dwelling occupant at risk of exposure.

9.10 (1) The hazard assessment of biological contaminates and biohazard removal procedures must be prepared
(a) by a qualified person who has adequate training and experience in the recognition, evaluation, and control of toxic microbial biohazards, and
(b) in consultation with the person assigned overall responsibility for administration of building envelope restoration program and with the occupational health and safety committee, if any, or worker occupational health and safety representative, if any.

(2) For the purposes of Subsection (1) (a), qualifications which are acceptable as evidence of adequate training and experience include:
(a) certified industrial hygienist (CIH) or registered occupational hygienist (ROH)
(b) professional training in a closely related field, provided that the holders of these qualifications have experience in the practice of occupational hygiene as it relates to the assessment of biological contaminates found in the above-mentioned settings;
(c) other combination of education, training, and experience acceptable to the board

Chapter SEVEN

Summary of Recommendations

Part II - Volume II Recommendation #1: The Attorney General's Department conduct a forensic audit of New Home Warranty, the Canadian Home Builders Association of BC, and the Residential Construction Institute

Part II - Volume II Recommendation #2: The Homeowner Protection Office, with the support of the Provincial Advisory Council, to provide the leadership for minimum mandatory education for multi-family residential design and construction. Such education to include the testing of architects, engineers, and registered builders, regarding the basics of building science and interpretation of the BC Building Code and Vancouver Building Bylaw.

Part II - Volume II Recommendation #3: That the provincial government through the Industry Trade Apprenticeship Commission (ITAC) tighten up on apprenticeship ratios to offer the best training possible to residential construction workers. Related to this area is the requirement for a proper and effective trades training system.

Part II - Volume II Recommendation #4: That the provincial government bring in adjustments to the Corporation Capital Tax Act so that a dedicated revenue amount of $30 million ($10 million per year over three years) be obtained from financial institutions for financing the Research and Education activities of the HPO. It is further recommended that this fund be used as a capital fund and the interest earned each year be allocated to research and education as set forth by the Provincial Advisory Council.

Part II - Volume II Recommendation #5: The provincial government create a Housing Ministry responsible for BC Housing, housing policy, residential construction, the Homeowner Protection Office, building standards, and the BC Building Code.

Part II - Volume II Recommendation #6: A Legislative Select Standing Committee be established to review, annually, for the next five years, all housing issues.

Part II - Volume II Recommendation #7: The Superintendent of Bankruptcies Office classify leaky condominium foreclosures with a maximum rating of six or under which avoids employment jeopardy as a result of a foreclosure.

Part II - Volume II Recommendation #8: That the mandatory repair warranty program include roofs in the definition of building envelope and that the repair program include 10-year warranty for structural repairs.

Part II - Volume II Recommendation #9: That the provincial government amend the Real Estate Act to require the conditional licensing of multi-family developer sales personnel.

Part II - Volume II Recommendation #10: that PDS be amended according to the HPO requirements, and that they become mandatory under the Real Estate Act. They should also include the requirement that a property cannot be sold unless both parties to the sale complete and sign the document.

Part II - Volume II Recommendation #11: That the HPO establish a Condominium Homeowners Office to administer the Strata Property Act and provide services to condominium homeowners in an effort to redress the imbalance created in the market place between developers and consumers.

Part II - Volume II Recommendation #12: That FICOM--in co-operation with HPO--establish regulatory reviews on underwriting practices, claims handling, price determination, and other important criteria such as corporate guarantee requirements, together with the current financial criteria, to ensure the integrity of the warranty market.

Part II - Volume II Recommendation #13: That the provincial government re-examine provisions in the Strata Titles Act which disallows common property extending across a property line.

Part II - Volume II Recommendation #14: The Workers' Compensation Board increase the frequency of site visits by WCB staff to condominium repair sites.

Part II - Volume II Recommendation #15: That WCB regulations governing hazard assessment of biological contaminates and work procedures be amended in Book 2, Part 9 of the Occupational Health and Safety Regulation Book - BC Regulation 296/97. The revised guidelines would read:

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(c) other combination of education, training, and experience acceptable to the board

Submitters' List

Organization	Representative	
Anson Realty Ltd.	Chateauneuf	Alain
Applied Science Technologists & Technicians of BC	Leech	John
Archtectural Institute of BC	Davidson	John
Association of Professional Engineers & Geoscientists of BC	Sunderland	Philip
Bank of Nova Scotia	Marlatte	George E.
Barclay McLeod, Architects	McLeod	Barclay
Baywest Property Management Services	Cartmel	Phil
BC & Yukon Territories Building Trades & Construction Council	Sigurdson	Tom
BC Building Envelope Council	Morstead	Tom
BC Building Science & Engineering	Moskalyk	Steven
BC Construction Association	Fulton	Abagail
BC Provincial Council of Carpenters	Duncan	Bill
BC Real Estate Association	Watt	Dave
BC Society of Landscape Architects	Wilson	Andrew
Building Envelope Research Consortium	Hazelden	Don
Building Officials' Association	Bortolussi	Rick
Busque, Perreault & Assoc.	Busque	Pierre-Michel
C & J Restoration	Sheloff	Joan & Cecil
Canada Mortgage & Housing Corporation, BC & Yukon Region	Lynch	Jim
Canadian Bankers Association	Griffin	Paul
Canadian Home Builders' Assn	Penzer	Doug
Coalition of Leaky Condo Owners (COLCO)	La Couvee	Sandra
ColyVan Property Services Ltd	Bebb	Trevor
Condominum Home Owners' Association	Saunders	Nona
CONDUITS	Murphy	John
Consulting Engineers of BC	Williams	Doug
Co-Op Housing Federation of BC	McMeekin	Ian
Co-Ops, Housing - Kitsilano Terrace	Hunter	Shirley
Co-Ops, Housing - Rising Star	Halliday	Richard
Coquitlam Town Centre Assn	Friesen	Claudette
Crawford & Associates, Barristers & Solicitors	Crawford	Glen
Credit Union Central of BC	Nygren	Wayne
DFH Real Estate	Wheaton	Robert
Discovery Economic Consulting	Young	Geoff
Evanic Perrault Robertson, Certified General Accountants	Chisholm	Bruce
Fraserway Appraisal Ltd.	Kobelsky	Brian G.
GE Capital Mortgage Insurance	Machej	Ed
Glaziers Union, Local 1527	Byrne	Pat
Financial Institutions Commission	Hobart	Robert
Homeowners Protection Office	Ramsay	Shayne
Government of British Columbia, MLA, Burnaby-Edmonds	Randall	Fred
Government of British Columbia, MLA, Nanaimo	Lovick	Dale
Government of British Columbia, MLA, Nelson-Creston	Evans	Corky
H. Niezen Inspections	Niezen	Henry
Harbour Homes Ltd.	Kuhn	Egon
Health Canada	Dodge	David
Henshaw Kjellbotn & McKinley, Chartered Accountants	McKinley	Reg
Highland Contracting & Services	Veaton	Lawrie
Independent House Diagnosis	Riley	David
Insurance Dispute Resolution Services of BC	Wright	Peter

Submitters' List

Organization	Representative	
International Brotherhood of Electrical Workers, Local 213	Thompson	David
International Manufacturers Warranty Systems Ltd.	Naismith	Ian
KPMG Inc. Trustee in Bankruptcy	Rusko	Robert
Lesperance, Mendes & Mancuso, Barristers and Solicitors	Mendes	John
London Guarantee Insce Co.	Petropoulos	George
Mandate Group Realty Corporation	Farrington	Ronald
MH Financial Consultants Ltd.	McCreath	Fred
Ministry of Social Development and Economic Security	Thompson	Bob
Morrison Hershfield Ltd.	Gallant	Pierre
Multiple Warranty Services Inc.	Stolz	K. Greg
Nanaimo, City of	Mehaffey	Brian
National Home Warranty Programs	Morris	Jim
National Research Council of Canada	Chown	Adaire
Nelson, City of	Exner	Gary
New Home Warranty	Moore	Ralph
New Home Warranty (former Chair & CEO)	Thomson	Jim
New Westminster, City of	Puckmayr	Chuck
North Shore Credit Union	Milner	Jane
NorthWest Occupational Health & Safety	McManus	Neil
Oak Ridge National Laboratory	Karagiozis	Dr. Achilles
Operative Plasterers' and Cement Masons' International Assn Local 919	Morgan	Darcy
Osmose, Inc., Wood Preserving Division	Wangel	Robert K.
Pacific Wood Preservation	Hollick	Mike
Paterson & Associates, Barristers & Solicitors	Paterson	Craig
Peter-Built Construction	Walsh	Peter
Point Grey Properties	LeSage	Stephen
Polygon Homes Ltd.	Genest	Richard P.
Powerline Group	McIsaac	Deborah
Preferred Group of Companies	Hatala	Wayne
Pre-Paid Legal Care of Canada	King	Tim
Professional Association of Managing Agents	Wunderlich	Mike
Professional Strata Council Consultants Inc.	Williamson	John
Property Inspection Certification Board	Lucas	Lloyd
R.J. Moore & Associates	Moore	Richard
RDH Building Engineers	Ricketts	David
Real Estate Council of British Columbia	Fawcett	Robert
Residential Home Warranty of Canada	Garrity	Gordon
Richmond, City of	Halsey-Brandt	Greg
Strata Council K-1442	Peck	Brian
Strata Council K-748	Dally	Dan
Strata Council KAS 986	Heathcote	Mrs. D.
Strata Council LMS 108	Atherton	Laurene
Strata Council LMS 545	Previer	James
Strata Council LMS 600	Baker	Susan
Strata Council LMS 908	Williamson	John
Strata Council LMS 1046	McKay	Eleanor
Strata Council LMS 1090	Aniba	Bill
Strata Council LMS 1092	Andrews	Sheila
Strata Council LMS 1167	Spark	Roberta
Strata Council LMS 1285	DeBalinhard	Stewart

Submitters' List

Organization	Representative	
Strata Council LMS 1328	Kaye	Geoff
Strata Council LMS 1410	Tomm	Calvin
Strata Council LMS 1436	McFarling	Shane
Strata Council LMS 1672	Bowes	Minna
Strata Council LMS 1699	Ames	Linda
Strata Council LMS 1841	Cybak	Margi
Strata Council LMS 1983	Young	Randy
Strata Council LMS 2219	O'Kane	Bobbi
Strata Council LMS 2332	Vizsolyi	Mike
Strata Council LMS 2430	Wong	Betty
Strata Council NES 122	Doratti	Colleen
Strata Council NW 2737	Zenner	Denyse
Strata Council VIS 1229	Walker	Florence
Strata Council VIS 1606	Jeffrey	John
Strata Council VIS 1864	Bateman	Jean
Strata Council VIS 2613	Featherstone	Frank
Strata Council VIS 2915	Candy	Gary
Strata Council VIS 2951	Thurbide	Cam
Strata Council VIS 3130	Adderley	Doug
Strata Council VIS 3156	Ramsden	Wendy
Strata Council VIS 3442	Krall	Tom
Strata Council VIS 3499	Farough	David
Strata Council VIS 3764	Matheson	Don
Strata Council VR 574	Campbell	Alastair
Strata Council VR 1899	Zeller	Allan
Strata Council VR 1934	Molund	Paul
Stratasphere Condominium Services Inc.	Wilson	Cora
Surrey, City of	McCallum	Doug
Timber Specialties Co.	Baker	Cliff
Township of Esquimalt	Rice	Ray
Union of BC Municipalities	Ranta	P.A. John
United Association of Journeymen and Apprentices of the Plumbing & Pipefitting Industry of the US and Canada, Local 170	Peppard	Wayne
United Brotherhood of Carpenters & Joiners of America, Local 1995	Duncan	Bill
University of BC, Dept. of Civil Eng	Russell	Prof. A.D
University of BC, Dept of Health Care & Epidemiology	Van Netten	Chris, Dr.
University of Waterloo	Straube	Dr. John
Urban Development Institute	Ilich	Olga
Vancouver, City of	Watts	Douglas
Vancouver Condominium Services Ltd.	Fanaken	Gerry
Vancouver Island Strata Owners' Association	Kelly	Frank
Victoria Harbour Residents' Association	MacDonald	Lynn
Workers' Compensation Board	McGinn	Ralph

APPENDIX II

APPENDIX I

Submitters' List

SUBMITTER'S NAME	
Amundson	George E.
Anderson	Ken
Armstrong	Milton
Arrani	Fina
Bailey	Lloyd
Bain	Nancy
Baker	Susan
Balderson	James
Baldock	James
Barker	Larry
Beasley	Larry
Beaucage	Suzanne
Beauprie	Mrs. Laurie
Beilstein	Irene
Boellaard	J.H.
Bond	Janine
Boon	John
Bowen	Robert
Bower	Richard
Boyd	John & Marjorie
Boyes	M.
Brodie	Charles
Brown	Keith
Burke	Muriel
Buttress	Larry
Carter	F.H.
Carvalho	Patricia
Charleston	Alan
Cherrier	Alan
Chin	Albert
Clark	Brian & Isobel
Cochran	J. Paul
Coleman	Maurice
Courtney	Mona & Ken
Craib	Phyllis
Cranna	Carla
Crawford	Gloria
Crocker	Grant
Currell	Elizabeth
Currie	Jim
Curtis	Vicki

SUBMITTER'S NAME	
Daniels	Greg
Davel	Kirsten
David	Danielle
Davies	Helen
Davis	Wayne
Deans	Olga
de Jong	Carl
DesRosiers	Cindy
Devine	S.M.
Dexter	Barb
Dick	Bill & Millie
Dieno	R.R.
Dollman	Elbie
Doyle	Graham
Dubnov	Martin
Duncan	Cathy
Dybvig	Larry
Ebenal	Deborah
Egles	Shirley
Enser	Maureen
Etter	Alison
Eylmann	Rudy
Fee	Gary
Firth	Judy
Fletcher	Nigel
Fong	Susan
Forcier	Doreen
Fournier	Sid & Dorothy
Galt	William & Renee
Garrett	Sharon
Gaughan	Mark
Goebel	Sibylle
Good	Jeanne
Gourley	Brian
Grasty	John
Griffiths	W.F.
Guenther	John
Gustavson	Mel
Haegedorn	Sheila
Hale	Colette
Harrington	Gavin

SUBMITTER'S NAME	
Healey	Dan
Henders	Stephanie
Hillman	Kent
Holloway	Clifford
Holt	Simma
Hoogewerf	Joan
Hosken	Marjorie
Hull	Wanda
Hunter	Henry
Huntingford	David & Natalie
Huntingford	Wendy
Ismael	Karim
Johnstone	Bruce & Eleanor
Kelln	Kathryn
Kelly	Frank B.
Kirby	Enid
Krall	Trudy
Kuhn	Robert
Kuresh	Mr. & Mrs.
Krvavac	Janet
La Couvee	Sandra
Langan	Peter
Law	Winnie Sui Wah
Limmert	Gale
Link	Peter
Livingston	Ed
Lo	Betty
Loucks	Jeff
Lund	Anna
MacFarlane	Olive
Main	Stella
Maretic	Carmen
Marphis	Louise
Martens	Martin
Martin	Eric
Martin	Marion
McDonald	Darryll
McDonald	Ralph
McFadden	James
McKay	Brian
McKenzie	Jim

SUBMITTER'S NAME	
McMullen	Donna
McNeil	K.
McPherson	Peter
McWilliams	Eleanor
Meln	Mel
Menard	Sandy
Mielke	Richard (Dick)
Milne	Kay
Minty	Isobel
Mitchell	David
Morgan	Edward
Morris	Brent
Muise	Laura
Murphy	John
Murray	Adrienne
Murray	J.M.
Naumann	Uwe
Neale	Derek
Neilsen	Larry
Nelson	Keith D.J.
Neun	Heather
Nisbet	Sue & Lorne
Noel	Marc
Ohrling	Finn
Olson	Paul
O'Meara	Tim
Parfitt	Ben
Paulson	Val & Bruce
Pecnik	Hilda
Plett	Irene
Rasilainen	Jan
Reimer	David
Rice	Teresa & William
Robinson	Gary
Robson	Donna
Roth	Sandra
Russell	Jack
Salusbury	Pamela
Sargent	Rick
Sargent	Rick
Saxvik	Christian

Submitters' List

SUBMITTER'S NAME	
Schettler	Carolyn
Seow	Doreen
Sheppard	Dick
Shirra	Robert
Simmon	Eric
Smart	Bill
Smith	Kelvin
Smith	Terry
Stevens	Jeff
Strain	William
Sutter	Rory
Tennant	Elizabeth
Tombrink	Bill
Toth	Sandra
Tsamura	Ed
Turner	G.A.
Tweed	Brian
Utley	Patty
Van den Hemel	Martin
Van der Holt	Ron
vander Mey	Jerry
Verge	David
Wahl	William
Wain	Lucille
Walton	Doug & Tammy
Warfield	Diane
Weir	G.E. (Mrs)
Weisz	Iolanda
Whaley	Larry
White	Gordon
Wilkinson	David A.
Williams	Roger
Willoughby	Norman
Wood	Dale
Zeiger	Kris
Zimmer	Maureen

1/10/99
13:55

PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 1055 Approved and Ordered AUG 11 1999

Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that

1 A Commission be issued under the Great Seal pursuant to section 8 of the *Inquiry Act* appointing David Barrett a sole commissioner to inquire into and report on the matters and in the manner set out in the attached Terms of Reference.

2 The entitlement to reimbursement for living and travelling expenses incurred by the commissioner appointed under section 1 is equivalent to the entitlement approved by Treasury Board for Managerial employees in Group III.

3 Consent is given to the commissioner to appoint clerks and stenographers the commissioner considers necessary for the conduct of the inquiry, and to pay them at rates or salaries that are equivalent to the rates or salaries paid to employees in similar positions in the public service.

4 To assist in achieving the objectives of the inquiry, the commissioner may appoint or retain counsel, research assistants and professional advisors that the commissioner considers appropriate and the rates, fees and expenses applicable to these appointees will be those established by the Attorney General.

5 The commissioner shall receive $725 for each day spent in the work of the inquiry.

Minister of Social Development and Economic Security

Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order)

Authority under which Order is made:

Act and section: *Inquiry Act*, section 8

Other (specify): o.c. 607/96

August 11, 1999

1053/99/13/mc

PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 2 , Approved and Ordered JAN 1 3 2000

Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that the Terms of Reference attached to order in council 1055/99 are amended in section 4 by striking out "by January 15, 2000," and substituting "by March 10, 2000,".

Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: Inquiry Act, s. 8

Other (specify):

January 6, 2000

1968/99/16/cac

PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 1238, Approved and Ordered SEP 10 1999

10/9/99
18:00

Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that the Terms of Reference attached to order in council 1055/99 are amended

(a) by adding the following section:

2.1 To inquire into the history of home warranties in British Columbia and the causes of the failure of New Home Warranty of British Columbia, Inc., *and*

(b) in section 4 by striking out "by October 29, 1999," *and substituting* "by January 15, 2000,".

Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Inquiry Act*, section 8

Other (specify):

September 10, 1999

1279/99/13/sak

A Further Inquiry into the Quality of Condominium Construction in British Columbia

TERMS OF REFERENCE

1 To further inquire into the quality of condominium construction in British Columbia and, in particular, the adequacy of protection for, and accountability to, consumers for faulty condominium construction.

2 To inquire into the impacts on homeowners, the housing market, mortgage insurers and the economy of the financial failure of New Home Warranty of British Columbia Inc.

3 To inquire into the extent of foreclosures, bankruptcies and related matters arising from faulty condominium construction.

4 To submit a report by October 28, 1999, to the Lieutenant Governor in Council, through the Minister of Social Development and Economic Security, recommending any measures, including but not limited to changes to legislation, regulations or administrative practice, that the Commissioner determines are needed.